

FEDERAL JUDICIAL CENTER
CASE STUDIES IN EMERGENCY ELECTION LITIGATION
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Assembled here are case studies on emergency election litigation in federal courts. Because of the time constraints in emergency cases, the case records are often not easily available from other sources. These 240 case studies were prepared by Robert Timothy Reagan, Margaret S. Williams, Marie Leary, Catherine R. Borden, Jessica L. Snowden, Patricia D. Breen, and Jason A. Cantone. We are grateful to Christopher Krewson, Matt Sarago, Geoffrey Erwin, Yvonne Washington, George Cort, Vashty Gobinpersad, Donna Pitts-Taylor, and Tyeika Crawford for their contributions to this project. We are especially grateful to the scores of judges who contributed their experiences and wisdom to this project in telephone interviews.

Note 1: In September 2014, statutory provisions concerning voting and elections were moved to a new title 52 of the U.S. Code.

Note 2: Some of these cases involve section 5 of the Voting Rights Act, which requires some jurisdictions to receive preclearance from the Justice Department or the District Court for the District of Columbia for changes to voting procedures. (These cases are marked with the topic “section 5 preclearance.”) On June 25, 2013, the Supreme Court declined to hold section 5 unconstitutional, but the Court did hold unconstitutional the criteria for which jurisdictions require section 5 preclearance. *Shelby County v. Holder*, 133 S. Ct. 2612.

REGISTRATION PROCEDURES

Superseded Registration Form

Brown v. Rokita (Richard L. Young, S.D. Ind. 1:08-cv-1484)

On the day before the 2008 general election, a voter filed a class action challenging the nullification of her voter registration because she had not used the latest version of the voter registration form. At a temporary restraining order hearing that day, the parties announced an agreement that would permit voters who submitted old registration forms to cast provisional ballots that would be counted if the registration applications included all necessary information.

Topics: Registration procedures; provisional ballots.

Segregating Ballots Because of Questionable Registrations

Atsaves v. Helander (Virginia M. Kendall, N.D. Ill. 1:08-cv-6199)

A voter registration team removed an action from state court seeking to segregate votes by voters registered by the team for investigation of improper registration. The district judge determined that the case did not present a federal question because the Help America Vote Act did not afford private rights of action, and relief from section 1983 requires willful and wanton conduct, which the plaintiffs had not alleged.

Topics: Help America Vote Act (HAVA); 42 U.S.C. § 1983; intervention; removal; matters for state court.

Regulation of Third-Party Voter Registrations

League of Women Voters of Florida v. Browning (Cecilia M. Altonaga, S.D. Fla. 1:08-cv-21243)

On April 28, 2008, the League of Women Voters filed a federal action in the Southern District of Florida challenging Florida's regulation of voter registration as so burdensome as to cause the League to suspend its voter registration efforts. On the following day, the district judge held a hearing, ordered the parties to submit a proposed consent order on the next day, and set a preliminary injunction hearing for June 19. On August 6, the court denied the League a preliminary injunction. Similar cases were filed in 2006 in the Southern District and in 2011 in the Northern District.

Topics: Registration procedures; case assignment.

Wrongfully Requiring Photo Identification for Voter Registration

Pakosz v. Orr (John W. Darrah, N.D. Ill. 1:06-cv-5992)

On the Thursday before the 2006 general election, a pro se plaintiff filed a federal complaint alleging that he was wrongfully prevented from registering to vote. The complaint was docketed on Monday, and the federal judge issued a temporary restraining order that day requiring the defendants to issue the plaintiff a voter registration card. Defendants had wrongfully required the plaintiff to present photo identification, which was not required by the voter registration statute.

Topics: Voter identification; registration procedures; pro se party.

Overly Burdensome Voter Registration Rules

Project Vote v. Blackwell (Kathleen M. O'Malley, N.D. Ohio 1:06-cv-1628)

In July 2006, public interest organizations challenged new voter registration laws as overly burdensome, and the court enjoined the new laws. The court awarded the plaintiffs \$321,485.28 in attorney fees and costs.

Topics: Registration procedures; attorney fees.

Enhanced Requirements for Registering and Voting in Arizona

González v. Arizona (2:06-cv-1268), *Inter Tribal Council of Arizona v. Brewer* (3:06-cv-1362), and *Navajo Nation v. Brewer* (3:06-cv-1575) (Roslyn O. Silver, D. Ariz.)

Four months in advance of Arizona's 2006 primary election, a federal complaint challenged proposition 200, a 2004 initiative that enhanced requirements for proof of citizenship for voter registration and proof of identity and residence for voting. The district court acted quickly on the plaintiffs' motions for a temporary restraining order but denied injunctive relief. In 1012, the court of appeals determined en banc that the proof of citizenship procedure for registration is superseded by the National Voter Registration Act but the identification requirement for voting is not. The Supreme Court agreed that the required federal registration form did not permit additional evidence of citizenship.

Topics: Citizenship; voter identification; registration procedures; National Voter Registration Act; interlocutory appeal; recusal; section 5 preclearance; primary election.

Strict Voter Registration Rules

Citizens Alliance for Secure Elections v. Vu (Paul R. Matia, N.D. Ohio 1:04-cv-2147)

In a challenge to a county's voter registration procedures, claiming that they were so strict as to disenfranchise voters, the court determined, on the case's third day, that provisional ballot procedures were sufficient to protect voters from disenfranchisement.

Topics: Registration procedures; provisional ballots.

Identification Numbers and Voter Registration

Lucas County Democratic Party v. Blackwell (James G. Carr, N.D. Ohio 3:04-cv-7646)

Eighteen days before a general election, a suit alleged that a directive by Ohio's secretary of state not to process voter registration forms that left blank the box for a driver's license or Social Security number violated the Help America Vote Act and the National Voter Registration Act. The court denied immediate relief, because there was not enough time to develop an evidentiary record.

Topics: Registration procedures; Help America Vote Act (HAVA); National Voter Registration Act; laches.

Correcting Imperfect Voter Registrations

Diaz v. Hood (James Lawrence King, S.D. Fla. 1:04-cv-22572)

Eight days after voter registration closed for the 2004 general election, three would-be voters and four unions filed a federal complaint alleging that five counties were improperly failing to process and approve voter registrations. At the end of the week, the district court heard a motion to expedite the case; at the end of the following week, the court heard a motion for a preliminary injunction. Four days later, the court dismissed the case for lack of standing, because the plaintiffs either cured or refused to cure their registration defects. In 2005, the court of appeals reversed the dismissal. The district court ruled against the plaintiffs again in 2006, but without prejudice. After a five-day bench trial on a third amended complaint, the court again ruled against the plaintiffs, finding the firm deadline for voter registration to be constitutionally reasonable.

Topics: Registration procedures; National Voter Registration Act; intervention; recusal.

Denial of Voter Registration Efforts

Goodwin v. Meyer (William F. Downes, D. Wyo. 1:04-cv-256)

A federal complaint challenged state proscriptions on voter registration drives. The district judge determined that the plaintiffs had failed to show irreparable injury because voter registration forms were available on the Internet.

Topic: Registration procedures.

Bundling Voter Registrations

Nu Mu Lambda Chapter v. Cox (William C. O'Kelley, N.D. Ga. 1:04-cv-1780) and ACORN v. Cox (Jack T. Camp, N.D. Ga. 1:06-cv-1891)

A 2004 complaint alleged that Georgia improperly required newly registered voters to submit their voter registration forms directly to the government rather than to coordinators of voter registration efforts. Thirteen days after the complaint was filed, the court granted the plaintiffs injunctive relief. The court of appeals affirmed in 2005. In 2006, a similar complaint alleged that Georgia was not complying with the earlier precedent. Again, the court granted the plaintiffs preliminary injunctive relief. Two years later, the court vacated the preliminary injunction because the parties had not moved the case forward.

Topics: Registration procedures; National Voter Registration Act; enforcing orders; interlocutory appeal.

Blaming Candidacy Withdrawal on a Voter Registration Challenge

Moseley v. Price (T.S. Ellis III, E.D. Va. 1:03-cv-1320)

A pro se federal complaint alleged that voting rights violations forced the plaintiff to withdraw from a race that he alleged he was certain to win. According to the complaint, because he registered to vote while he was in the process of moving into a Loudoun County residence, his registration card was returned; a radio journalist made an issue of it, the county's circuit court appointed a special prosecutor, and the state police investigated the matter. The judge dismissed the federal voting rights claims as without merit and dismissed state law claims without prejudice.

Topics: Registration procedures; pro se party; matters for state courts.

Voter Registration for College Students

Saunders v. Andrews (4:04-cv-20) and Lowe v. Davis (4:04-cv-21) (Raymond A. Jackson, E.D. Va.)

A college student wishing to run for city council filed a federal complaint challenging the denial of his voter registration. On the following day, three other students filed a similar complaint. The federal judge ruled against the students, but a state judge granted one of the students relief. By the time of the general election, two of the students could register because they obtained driver's licenses at their local address.

Topic: Student registration.

Voter Registration for Disabled Students

National Coalition for Students with Disabilities Education and Legal Defense Fund v. Bush (Robert L. Hinkle, N.D. Fla. 4:00-cv-442)

A federal complaint alleged that Florida failed to provide voter registration services to disabled students, as required by the National Voter Registration Act, for the 2000 general election. The district judge concluded that "the time to seek any [registration] redress affecting the 2000 election was prior to that election." Respecting long-term relief, the case settled in May 2001. The judge later learned that a named plaintiff was also a named plaintiff in a similar action in another state; he awarded the plaintiffs zero attorney fees.

Topics: National Voter Registration Act; registration procedures; laches; attorney fees.

Requiring Social Security Numbers for Voter Registration

Schwier v. Cox (Julie E. Carnes, N.D. Ga. 1:00-cv-2820)

On October 26, 2000, two voters filed a federal complaint challenging a requirement that they provide Social Security numbers as part of their voter registrations. On Friday, November 3, the district judge ruled that to vote the plaintiffs could file their Social Security numbers with election officials and with the court under seal; depending on the resolution of the case, the numbers would either be unsealed or destroyed. In 2002, the district judge ruled that an uncodified provision of the Privacy Act did not provide the plaintiffs with rights of action, but the court of appeals determined in 2003 that the uncodified provision was nevertheless applicable law that did afford private rights of action.

Topics: Registration procedures; voter identification.

Changing Party Affiliation for a Primary Election (PDF)

Van Wie v. Pataki (David N. Hurd, 1:00-cv-322), *Van Allen v. Cuomo* (Gary L. Sharpe, 1:07-cv-722), and *Van Allen v. Walsh* (Lawrence E. Kahn, 1:08-cv-876) (N.D.N.Y.)

Two weeks in advance of a presidential primary election, two voters filed a federal complaint challenging a law that allowed new voter registrants to enroll in a political party up to 25 days before a primary but did not allow a change in party enrollment for already registered voters to go into effect until after the next general election. One week later, after oral argument, the district judge dismissed the complaint, finding compelling the incentive to register for new voters. Actions initiated in 2007 and 2008 were similarly unsuccessful.

Topics: Registration procedures; primary election; intervention; pro se party.

REGISTRATION DATABASES

Suit Arising Under State Implementation of the Help America Vote Act Remanded to State Court

Ohio ex rel. Mahal v. Brunner (George C. Smith, S.D. Ohio 2:08-cv-983)

A state's secretary of state removed a mandamus action filed with the state's supreme court concerning the state's compliance with the Help America Vote Act (HAVA). The district court immediately remanded the case, because the mandamus action sought enforcement of the state's HAVA implementing legislation, which meant that the case arose under state law.

Topics: Matters for state courts; removal; Help America Vote Act (HAVA).

Computerized Voter Registration List

United States v. Alabama (W. Keith Watkins, M.D. Ala. 2:06-cv-392)

The Attorney General sued to enforce Alabama's compliance with the Help America Vote Act's requirements for voter registration databases. The judge appointed the governor as a special master to order compliance.

Topics: Help America Vote Act (HAVA); special master.

NULLIFYING REGISTRATIONS

Purging Voter Registrations Because of Registration in Other States

Democratic Party of Virginia v. Virginia State Board of Elections (Claude M. Hilton, E.D. Va. 1:13-cv-1218)

A federal complaint challenged the purging of voter registrations for persons that appeared to have registered in other states since the last time they voted in Virginia, alleging an excess of errors. The district judge denied the plaintiffs relief, finding several mechanisms in place to correct errors.

Topic: Registration challenges.

Cancellation of Voter Registrations for Not Voting in the Last Election (PDF)

Colón Marrero v. Conty Pérez (Carmen Consuelo Cerezo, D.P.R. 3:12-cv-1749)

Five days before a September 17, 2012, voter registration deadline in Puerto Rico, a voter filed a federal complaint challenging the cancellation of her registration because she had not voted in the 2008 general election. The district judge denied the voter immediate relief because (1) the National Voter Registration Act does not apply to Puerto Rico as it does to the states, (2) the Help America Vote Act does not afford a private right of action, and (3) the plaintiff had not justified her bringing the case so late. The court of appeals, on the other hand, found probable success on the merits and remanded the case for an evidentiary hearing. On October 18, the court of appeals determined that relief for the plaintiff had become infeasible. In November, the court of appeals vacated an order issued in the plaintiff's favor by the district court judge under the All Writs Act. After further litigation, the court issued a declaratory judgment in favor of the plaintiffs, which is on appeal. The court ruled that canceling a federal voter registration after missing only one general election violates HAVA.

Topics: Registration challenges; National Voter Registration Act; Help America Vote Act (HAVA); laches; enforcing orders.

Purging Noncitizen Voter Registrations

United States v. Florida (Robert L. Hinkle, N.D. Fla. 4:12-cv-285)

The U.S. Court of Appeals for the Eleventh Circuit determined that a systematic purge of noncitizens' voter registrations violates the National Voter Registration Act. During the 2012 election cycle, the Justice Department brought a federal action against Florida in the Northern District of Florida claiming that Florida was violating the Act. Fifteen days later, the district court ruled against preliminary injunctive relief, because Florida had ceased the purge that prompted the suit. In addition, the district judge ruled that the 90-day proscription against systematic purges did not apply to noncitizens. In another case, a judge in the Southern District came to the same conclusion. Florida resumed its purge upon access to more reliable citizenship data from the Department of Homeland Security. In 2014, the court of appeals held a systematic purge even of noncitizens illegal shortly before an election, when there is little time to correct errors.

Topics: Citizenship; registration challenges; National Voter Registration Act; intervention; recusal; case assignment.

A List of Inactive Voters in Lawrence, Massachusetts

¿OÍSTE? v. City of Lawrence (Nathaniel M. Gorton, D. Mass. 1:05-cv-12218)

On the Friday before a local election, two voters and a political organization filed a federal complaint seeking relief from a recent notification to a large number of potential voters that they had been placed on an inactive list. On Monday afternoon, the judge recessed proceedings for 23 minutes for the parties to agree on a statement to voters in both English and Spanish to be broadcast and printed in the media. Several months later, after three filings stating that the parties were working to resolve matters without litigation, the judge dismissed the case without prejudice.

Topics: Registration procedures; case assignment.

Nullifying University Students' Voter Registrations

Copeland v. Priest (George Howard, Jr., E.D. Ark. 4:02-cv-675)

An October 25, 2002, federal complaint sought the restoration of voter registrations for students and other persons living in university housing. The first judge assigned recused himself because he was out of town, and the second judge recused himself because one plaintiff's father was the governor, whose opponent the judge's wife supported. A third judge granted the plaintiffs relief, finding that the state judge's order nullifying registrations improperly created "an irrebutable presumption that would-be voters who live at a university address and are not members of the staff at a university are not residents." The court awarded the plaintiffs \$28,221.92 in attorney fees and costs.

Topics: Student registration; registration challenges; intervention; matters for state courts; case assignment; attorney fees.

Denial of the Right to Vote Because of Eviction

Dowd v. Town of Dedham (Joseph L. Tauro and Marianne B. Bowler, D. Mass. 1:01-cv-10944)

A frequent pro se plaintiff filed a federal complaint four days before a municipal election. The plaintiff challenged denial of his right to vote arising from his eviction from a residence in the town. The judge granted the plaintiff in forma pauperis status and ordered him to show cause why the complaint should not be dismissed for lack of merit. The court of appeals affirmed dismissal of the action.

Topics: Pro se party; registration challenges.

Threats to Cancel Voter Registrations

Chatman v. Delaney (Clifford J. Proud, S.D. Ill. 3:09-cv-259)

Voters filed a federal complaint because of notices they received that their voter registrations might be canceled in advance of an April 7, 2009, election and absentee ballots they might have cast might not be counted. The county had identified the voters' village as one with a high rate of voter fraud, so it sent registration challenge letters to 558 of its residents. The parties consented to a decision by a magistrate judge who was available and local; the assigned district judge was 110 miles away. The case was resolved by a consent order issued after a conference with the judge.

Topics: Registration challenges; case assignment.

Voter Registrations for Juvenile Offenders

Hamilton v. Ashland County Board of Education (Donald C. Nugent, N.D. Ohio 1:08-cv-2546)

Adult inmates of a juvenile correctional facility sued to enjoin cancelation of their voter registrations for not being permanent residents. The district court denied the plaintiffs relief. The court of appeals vacated the portion of the district court decision pertaining to state law as a matter for state courts to decide.

Topics: Prisoner voters; registration challenges; matters for state courts.

Voter Registration Purges in Colorado

Common Cause of Colorado v. Coffman (John L. Kane, D. Colo. 1:08-cv-2321)

A federal complaint alleged that Colorado was engaging in improper systematic purging of voter registration rolls within 90 days of a general election in violation of the National Voter Registration Act. Among the issues in the case was Colorado's practice of canceling new registrations if registration notices came back undeliverable within 20 days of their being mailed. After an evidentiary hearing, the parties stipulated to a temporary restraining order. The state's secretary of state adopted an aggressive interpretation of his attorney's stipulation, but the district judge further restrained the secretary's actions. The litigation proceeded at a normal pace after the election, and the district judge eventually ruled that Colorado's 20-day rule did not violate the National Voter Registration Act because voters affected by it could cast provisional ballots.

Topics: Registration challenges; registration procedures; National Voter Registration Act; enforcing orders; case assignment.

Citizenship Verification

Morales v. Handel (Jack T. Camp, N.D. Ga. 1:08-cv-3172)

A naturalized citizen sued Georgia for its efforts to purge noncitizens from voter registration rolls. A three-judge court determined that section 5 preclearance was required for the efforts and granted interim relief. Georgia eventually was able to establish procedures that earned preclearance.

Topics: Citizenship; registration challenges; Help America Vote Act (HAVA); section 5 preclearance; three-judge court.

Partisan Canceling of Voter Registrations

Montana Democratic Party v. Eaton (Donald W. Molloy, D. Mont. 9:08-cv-141)

One political party filed an action against the other political party for launching an effort to nullify several thousand voter registrations based on postal changes of address. Because the state did not fully effectuate the plan, in part because of the filing of the case, the court did not need to grant the plaintiffs relief.

Topics: Registration challenges; National Voter Registration Act.

Improperly Canceling Voter Registrations for Changes of Address

United States Student Ass'n Foundation v. Land (Stephen J. Murphy III, E.D. Mich. 2:08-cv-14019)

Three organizations filed a federal complaint charging the state with improperly canceling voter registrations based on insufficient indications of residence changes. The district judge determined that the state's practice of rejecting voter registrations if registration identification cards came back from the post office as undeliverable failed to follow the notice and waiting period requirements of the National Voter Registration Act. The state's practice of canceling registrations upon learning that the voter became registered to drive in another state also relied on flawed logic and violated the act. The case was finally resolved by settlement with a payment of \$150,000 in attorney fees and costs to the plaintiffs.

Topics: Registration challenges; National Voter Registration Act; attorney fees; intervention.

Using Foreclosure Notices to Challenge Voters

Maletski v. Macomb County Republican Party (David M. Lawson, E.D. Mich. 2:08-cv-13982)

Based on a news website's report that one party was planning to use foreclosure notices to challenge voter registrations during the 2008 general election, the other party filed a federal complaint to enjoin the plan. In preparation for a hearing, the parties learned that the news report was not accurate, so the parties stipulated to a dismissal on the day of the hearing.

Topic: Registration challenges.

Hurricane Displacement and Voter Registration

Segue v. Louisiana (Kurt D. Engelhardt, E.D. La. 2:07-cv-5221)

The complaint challenged Louisiana's notification procedures for challenges to voter registrations based on evidence that the voters had registered elsewhere. The district judge determined that preclearance was not necessary because Louisiana was giving more notice than it was precleared to, and empaneling a three-judge court was not necessary.

Topics: Registration challenges; section 5 preclearance; three-judge court.

Enjoining Ballot Security Initiatives

Democratic National Committee v. Republican National Committee (Dickinson R. Debevoise, D.N.J. 2:81-cv-3876)

A voter in Ohio moved to intervene in a 1981 District of New Jersey case, complaining that widespread voter registration challenges in Ohio violated a consent decree between the two major political parties in the New Jersey case. On the day before the 2004 election, the district court in New Jersey granted injunctive relief. A panel of the court of appeals, over a dissent, denied the defendants a stay, but the full court ordered en banc review on election day. Because the plaintiff was allowed to vote, the appeal was subsequently declared moot.

Topics: Registration challenges; intervention; enforcing orders.

Widespread Voter Registration Challenges

Miller v. Blackwell (Susan J. Dlott, S.D. Ohio 1:04-cv-735)

One week before the 2004 general election, the Democratic Party filed a federal complaint challenging widespread voter registration challenges—approximately 22,000—by the Republican Party based on returned mail. The court enjoined administrative hearings on the challenges through the election. After the election, the plaintiffs dropped the case.

Topics: Registration challenges; intervention; class action; enforcing orders.

Spouses Registered in Different Precincts

Bell v. Marinko (James G. Carr, N.D. Ohio 3:02-cv-7204)

With a primary election 18 days away, a voter filed a federal complaint seeking injunctive relief against the county's hearing a challenge to his voter registration on residency grounds. The district court determined that challenge procedures did not violate the National Voter Registration Act, but there was a probable equal protection violation by a statutory provision raising a question of residence for spouses not separated and not registered in the same precinct. The court temporarily enjoined application of that statutory provision. After the election, the court heard summary judgment motions on an amended complaint adding plaintiffs whose residency challenges were successful; the original plaintiff prevailed in his challenge. The district court dismissed the action, and the court of appeals affirmed.

Topics: Registration challenges; equal protection; National Voter Registration Act; primary election.

Voter Registrations Voided Because a Deputy Registrar Was Dismissed

Johnson v. Helander (Charles R. Norgle, Sr., N.D. Ill. 1:00-cv-6926)

A high-school student filed a federal complaint to validate high-school voter registrations that had been voided because of sloppy work by a deputy registrar. The district judge denied class certification, and he denied immediate injunctive relief. The county attorney presented evidence that the plaintiff had received notice of his voided registration in time to cure it.

Topics: Registration procedures; student registration; class action.

Voting and Mental Illness

Doe v. Attorney General (George Z. Singal, D. Me. 1:00-cv-206)

One month before the 2000 general election, three women under psychiatric guardianships filed a federal complaint challenging Maine's exclusion of persons under such guardianships from the right to vote. Approximately three weeks later, the court denied injunctive relief. On a more complete record the following year, the court invalidated the franchise exclusion.

Topic: Equal protection.

Challenge to Voter Registrations in an RV Park

Curtis v. Smith (Howell Cobb, E.D. Tex. 9:00-cv-241)

The plaintiffs in this federal action sued to enjoin challenges to 9,000 voter registrations in an RV park that could hold only a fraction of the voters at any one time. The plaintiffs alleged that procedures on the en masse challenge had not been precleared pursuant to section 5 of the Voting Rights Act, and a three-judge court ultimately agreed.

Topics: Section 5 preclearance; three-judge court; registration challenges; matters for state courts; intervention.

DISTRICT LINES

Redistricting the Bibb County School District

Miller v. Bibb County School District (Hugh Lawson, M.D. Ga. 5:12-cv-239)

A June 26, 2012, federal complaint alleged malapportionment for a county board of education. The district judge delayed the pending primary election until the day scheduled for a possible primary runoff to give the county enough time to adopt a precleared redistricting plan. By consent order, the judge awarded the plaintiffs attorney fees and costs.

Topics: Malapportionment; enjoining elections; section 5 preclearance.

Redistricting the Sumter County School Board

Bird v. Sumter County Board of Education (W. Louis Sands, M.D. Ga. 1:12-cv-76)

The district court enjoined July 31, 2012, primary elections for Sumter County, Georgia's board of education, on a May 22 federal complaint. The relief was sought by both the voter plaintiff and the county defendants because of the state's failure to seek timely preclearance for new district lines reflecting the 2010 census. The judge permitted an interest group to intervene for the purpose of proposing a new district plan, but the judge decided to draw his own plan with the assistance of the legislature's reapportionment office.

Topics: Malapportionment; enjoining elections; intervention; section 5 preclearance.

Redistricting a Board of Education

Adamson v. Clayton County Elections and Registration Board (Charles A. Pannell, Jr., N.D. Ga. 1:12-cv-1665)

A May 11, 2012, federal complaint alleged malapportionment for a county board of education's district lines, because the lines had not been redrawn after the 2010 census. On the day at the beginning of the qualifying period for the primary election, the district judge heard the case and enjoined election procedures until the district lines could be redrawn. With the assistance of the state's reapportionment office, the judge adopted a new districting map in June. There was no primary election that year; all candidates ran in the general election. The court assessed half of the expert's fees to each side.

Topics: Malapportionment; enjoining elections; case assignment.

Redistricting Kansas

Essex v. Kobach (Kathryn H. Vratil, D. Kan. 5:12-cv-4046)

Kansas was the last state to redraw district lines in light of the 2010 census, and a voter filed a federal action for court-drawn districts on May 3, 2012, a little over a month in advance of candidate filing deadlines. After a day-and-a-half bench trial, a three-judge court issued new district lines for congressional seats, the state legislature, and the state board of education on June 7. The court awarded the plaintiff and some intervenors \$379,447.15 in attorney fees and expenses.

Topics: Malapportionment; three-judge court; intervention; attorney fees.

A Transitionally Unrepresented District Because of District Restructuring

NAACP—Greensboro Branch v. Guilford County Board of Elections (William L. Osteen, Jr., M.D.N.C. 1:12-cv-111)

The state's restructuring of a county board of commissioners would result in a two-year transition period with one district unrepresented and another district with two representatives. The district judge declined to enjoin the beginning of the candidate filing period, but on further hearing provisionally enjoined the election. The court's ultimate remedy was to swap the election schedule for two districts so that an election would be held for the district that would otherwise be unrepresented instead of another district, an election for which would be held two years later. The state resolved the issue of double representation by appointing one of the duplicate representatives to an at-large seat.

Topics: Equal protection; enjoining elections.

Using an Old Legislative Districting Plan

Smith v. Aichele (2:12-cv-488), *Garcia v. 2011 Legislative Reapportionment Comm'n* (2:12-cv-556), and *Pileggi v. Aichele* (2:12-cv-588) (R. Barclay Surrick, E.D. Pa.)

From January 30 through February 3, 2012, three federal complaints sought to block April 24 primary legislative elections because the district lines were based on the 2000 census. On February 8, the judge denied all requests to delay the primaries. On March 17, 2014, the court of appeals affirmed a judgment against voters because the voters did not reside in districts with legislative seats up for election in 2012.

Topics: Malapportionment; enjoining elections.

Texas Redistricting in 2011

Davis v. Perry (Orlando L. Garcia, W.D. Tex. 5:11-cv-788)

On September 22, 2011, six days after a three-judge redistricting bench trial on legislative and congressional districts in Texas, voters filed a federal complaint alleging dilution of minority voting strength in their districts. The court ordered the defendants to respond by October 3, and the case was consolidated with a collection of cases already underway.

Topics: Malapportionment; three-judge court; case assignment; section 2 discrimination; section 5 preclearance; intervention; attorney fees; removal; pro se party.

Malapportioned Districts in an Election Held Soon After the Release of New Census Data

Graves v. City of Montgomery (W. Keith Watkins, M.D. Ala. 2:11-cv-557)

Six weeks and one day in advance of a planned August 23, 2011, election, a federal complaint alleged that the city council districts were malapportioned because they had not been redrawn to reflect the 2010 census. The district judge denied immediate relief and ultimately ruled that redistricting—which the evidence showed to be a work in progress—was not yet required.

Topics: Malapportionment; laches.

Mississippi County Board of Supervisors Malapportionment

Madison County Board of Supervisors v. Mississippi (William H. Barbour, Jr., and Louis Guirola, Jr., S.D. Miss. 3:11-cv-119), County Branches of the NAACP v. County Boards of Supervisors (Sharion Aycock, N.D. Miss. 1:11-cv-59 and 2:11-cv-40; Michael P. Mills, N.D. Miss. 1:11-cv-60, 2:11-cv-43, 3:11-cv-27, and 3:11-cv-28; W. Allen Pepper, Jr., N.D. Miss. 2:11-cv-41 and 2:11-cv-42; and Louis Guirola, Jr., S.D. Miss. 3:11-cv-121, 3:11-cv-122, 3:11-cv-123, 3:11-cv-124, 4:11-cv-33, 5:11-cv-28, 5:11-cv-29, and 5:11-cv-30), and Redd v. Westbrook (Louis Guirola, Jr., S.D. Miss. 3:11-cv-321)

Every 20 years, the interval of time between the decennial census and elections to county boards of supervisors in Mississippi is so short that it is difficult to redistrict the county boards in time for the elections. Among the federal lawsuits filed in 2011 because of this in Mississippi's two districts, 17 sought court intervention to enable redistricting before the election and one sought court intervention to prevent redistricting before the election. Five district judges denied immediate judicial relief. The court of appeals determined that the 2011 elections mooted the cases.

Topics: Malapportionment; intervention; case assignment.

Constitutionality of a Dual-Majority Requirement

Tigrett v. Cooper (S. Thomas Anderson, W.D. Tenn. 2:10-cv-2724)

A federal complaint alleged vote dilution in a dual-majority requirement for a 2010 referendum on the consolidation of city and county governments. An agreed preliminary injunction enjoined certification of the forthcoming referendum results and required referendum votes in the county to be counted separately for voters within and outside the city. Although the referendum failed, the district judge determined that the case was not moot. In 2014, the judge granted summary judgment against the plaintiffs. Disagreeing on the mootness question, the court of appeals dismissed the appeal.

Topics: Ballot measure; equal protection; section 2 discrimination; enjoining certification; ballot segregation; intervention.

Section 5 Preclearance for Acquisition of Property

City of College Park v. City of Atlanta (Julie E. Carnes, N.D. Ga. 1:08-cv-1464)

The City of College Park and one of its residents filed a federal complaint against the City of Atlanta in the Northern District of Atlanta on April 18, 2008, claiming that Atlanta was violating section 5 of the Voting Rights Act by acquiring an apartment building in College Park to clear the land of structures and people for benefit of the airport without first obtaining preclearance for the change in College Park's electorate. On the day that the complaint was filed, the district judge issued a temporary restraining order enjoining the property acquisition, but the property had already been acquired earlier in the day that the judge vacated the order. The parties agreed to a settlement.

Topics: Section 5 preclearance; three-judge court.

At-Large Election to Districts in Memphis

Operation Rainbow-Push, Inc. v. Shelby County Election Commission (Jon P. McCalla, W.D. Tenn. 2:06-cv-2451)

A municipality removed a state-court action challenging an election to a commission because the members were to be selected from districts but elected at large. Observing the potential impact on candidates for other offices in the election, the district judge denied the plaintiffs immediate relief.

Topics: Enjoining elections; section 2 discrimination; equal protection; intervention; removal.

Emergency Evaluation of Gerrymandering

Kidd v. Cox (Beverly B. Martin, N.D. Ga. 1:06-cv-997)

As the qualifying period for filing candidacy papers closed, a possible candidate filed a constitutional challenge to legislative district lines. The plaintiffs sought an emergency hearing by a three-judge court. The three-judge court extended the deadline and heard the case. The court ruled against the plaintiffs, finding the population deviations to be within constitutional limits, and issued a 46-page opinion on the matter two weeks later.

Topics: Malapportionment; section 5 preclearance; three-judge court.

Redistricting an Incumbent Out of His District

Jenkins v. Ray (Clay D. Land, M.D. Ga. 4:06-cv-43)

After school board redistricting had received preclearance pursuant to section 5 of the Voting Rights Act, it was discovered that the district line ran through the school board chair's property and his dwelling was no longer in the district he represented. Three months before a school board election, six voters filed a federal complaint challenging the preclearance. The assigned judge issued a temporary restraining order suspending the ballot qualification deadline, and a three-judge court held an evidentiary hearing at the end of the next month. The three-judge court determined that redistricting the incumbent out of his district required preclearance, so election officials allowed him to continue to represent and vote in his original district.

Topics: Section 5 preclearance; three-judge court; getting on the ballot; enforcing orders; provisional ballots.

Enjoining an Election for New District Lines

Morman v. City of Baconton (W. Louis Sands, M.D. Ga. 1:03-cv-161)

The federal district court enjoined an election for city council because the district lines had only recently received preclearance pursuant to section 5 of the Voting Rights Act and a state judge and refused to allow a delay to await preclearance of the new lines. The matter was heard on the afternoon before the scheduled November election. The election was held instead at the time of the presidential primary elections the following March. The matter of attorney fees was settled out of court.

Topics: Malapportionment; enjoining elections; section 5 preclearance; three-judge court; attorney fees.

Malapportioned City Commission Districts

Wright v. City of Albany (W. Louis Sands, M.D. Ga. 1:03-cv-148)

The district court enjoined the November 2003 election for Albany, Georgia's board of commissioners on a September 24 federal complaint that the commission districts were malapportioned. District lines reflecting the 2000 census had not yet received preclearance pursuant to section 5 of the Voting Rights Act. The judge permitted a mayoral candidate, elected at large, to intervene in an unsuccessful attempt to protect the mayoral election's going forward as planned. With the assistance of the state legislature's Reapportionment Services Office, the judge drew district lines and set an election for February 10, 2004. On the day of the election, the judge kept the polls open until 9:00 p.m. because of problems at some polls. The plaintiffs recovered \$35,647.75 in attorney fees and expenses.

Topics: Malapportionment; enjoining elections; section 5 preclearance; intervention; polling hours; attorney fees.

New School Board Elections to Accommodate the Decennial Census

Cox v. Donaldson (George Howard, Jr., E.D. Ark. 5:02-cv-319)

Three school board members filed a federal complaint on September 3, 2002, to enjoin a September 17 school board election. Five school board directors served staggered five-year terms, and the opening of all seats to new elections was intended to accommodate the 2000 census data. On the day after the election, the district judge issued an agreed order temporarily enjoining certification of the election. The following May, the parties agreed that the election would be certified only for the position with the expired term.

Topics: Enjoining elections; enjoining certification.

Redistricting Elbert County

Brown v. Elbert County (Hugh Lawson, M.D. Ga. 3:02-cv-45)

In May 2002, voters filed an action in federal court to have the district lines for two county boards redrawn to reflect the 2000 census. The district judge appointed the state reapportionment office to assist him in ordering new district lines and awarded the plaintiffs attorney fees.

Topics: Malapportionment; attorney fees.

Redistricting New Jersey in 2001

Page v. Bartels (Dickinson R. Debevoise, D.N.J. 2:01-cv-1733)

In an election year for New Jersey, a federal complaint challenged district lines for the state legislature that were adopted on the previous day. On the day that the complaint was filed, the judge signed a proposed order to show cause why the new districts should not be enjoined. At a hearing four days later, the judge determined that there was no likelihood that the plaintiffs would prevail on the merits. The court of appeals ruled one week later that the district court should have empaneled a three-judge court to hear the case. The three-judge court granted summary judgment to the defendants.

Topics: Malapportionment; three-judge court.

Voting Rights for Annexed Territory

Marascalco v. Grenada (Rhesa Barksdale, Neal B. Biggers, Jr., and Glen Davidson, N.D. Miss. 3:00-cv-61)

Ten days in advance of a municipal election, residents of recently annexed territory filed a federal complaint seeking to halt the election in which they would not be able to vote because the Justice Department denied preclearance to the annexation. A three-judge court heard the case six days later and denied immediate relief. The court doubted its jurisdiction over the matter and expressed concern about the filing of the complaint nearly two months after the denial of preclearance.

Topics: Enjoining elections; equal protection; three-judge court; section 5 preclearance; laches.

FILLING VACANCIES

Validity of a Local Special Election

Powell v. Alabama (L. Scott Coogler, N.D. Ala. 2:08-cv-1345)

The federal case involved a dispute about whether a county commission vacancy had been filled by gubernatorial appointment or by special election, both of which had occurred. The case included the question of whether the procedure for filling the vacancy required section 5 preclearance. As the next general election drew near, the plaintiff voluntarily dismissed the action because the governor's appointee failed to qualify for the ballot.

Topics: Section 5 preclearance; three-judge court.

Removal of an Elected Official as a Violation of Voting Rights

Kuhn v. Thompson (Mark E. Fuller, M.D. Ala. 2:03-cv-1136)

A 2003 complaint challenged the disciplinary removal of Alabama's chief justice for his violating a federal order to remove a Ten Commandments monument from the court building's rotunda. The district judge denied the plaintiffs immediate injunctive relief and granted the defendants' motion to dismiss the complaint. (1) The defendants were entitled to *Younger v. Harris* abstention because the chief justice's appeal to Alabama's supreme court was still pending. (2) The defendants were entitled to judicial immunity. (3) The plaintiffs failed to state a valid claim because the right to elect the chief justice did not include a right to keep him in office for his whole term.

Topics: Matters for state courts; 42 U.S.C. § 1983; enforcing orders.

GETTING ON THE BALLOT

Ballot Access for Minor Parties in Tennessee

Tomasik v. Goins (William J. Haynes, Jr., M.D. Tenn. 3:13-cv-1118)

A federal complaint filed on October 9, 2013, alleged that ballot access rules were so onerous that the Libertarian Party was unable to qualify for a November 21 special election for a state house seat. After an October 31 hearing, the district judge granted the plaintiffs relief, based in part on his rulings in previous related cases. He awarded the plaintiffs \$26,091 in attorney fees and costs.

Topics: Getting on the ballot; case assignment; attorney fees; early voting.

Seeking Federal Relief for Denial of Certification As a Write-In Candidate After Losing in State Court

Bonds v. Orr (Robert M. Dow, Jr., N.D. Ill. 1:13-cv-2610)

At approximately 1:00 p.m. on the day before an election for a high school district board of education, a federal district court judge received a complaint seeking the plaintiff's listing as a write-in candidate. After a 3:30 hearing, the judge determined that because the plaintiff's claims had already been pursued unsuccessfully in state court, they were barred by the *Rooker-Feldman* doctrine, which states that among federal courts only the Supreme Court has appellate jurisdiction over state court proceedings.

Topics: Getting on the ballot; matters for state courts; pro se party.

Bad-Faith Litigation by a Felon to Get on the Ballot

Blakely v. City of Laurel Clerk Office (Keith Starrett, S.D. Miss. 2:13-cv-72)

A would-be candidate for city council filed a pro se federal complaint alleging wrongful disqualification of his candidacy on the basis of old felony convictions. The district judge set the case for hearing nine days later. Two weeks after that, the district judge found the case to have been filed in bad faith because the plaintiff had already lost three similar state-court cases, and the judge sanctioned the plaintiff \$5,000. The court of appeals affirmed the dismissal and the sanction.

Topics: Getting on the ballot; pro se party; matters for state courts; recusal.

Request to Be on the Ballot on the Eve of a Presidential Election

Germalic v. Bullock (Richard G. Andrews, D. Del. 1:12-cv-1347)

Approximately two weeks in advance of the 2012 presidential election, a plaintiff filed a pro se federal complaint that the state's requirements for being a presidential candidate were too onerous. Three days after the complaint was filed, the district court denied the plaintiff injunctive relief for failure show any effort to meet ballot qualifications and for seeking relief after the ballots had been printed.

Topics: Getting on the ballot; pro se party; laches.

Whether City Limits Include a Candidate's Residence

Naramore v. Posey (L. Scott Coogler, N.D. Ala. 6:12-cv-2584)

A would-be candidate for mayor filed a federal complaint challenging his disqualification for residing in unincorporated territory. An interlocutory consent order resolved the immediate issue in the plaintiff's favor after three telephone conferences with the judge and the parties.

Topic: Getting on the ballot.

Sore Loser on Ballot

Libertarian Party of Michigan v. Johnson (Paul D. Borman, E.D. Mich. 2:12-cv-12782)

On June 25, 2012, the Libertarian candidate for President filed a federal complaint challenging application of Michigan's sore loser statute to disqualify him from the general election ballot because he withdrew from the Republican primary three minutes late. After Michigan responded to the complaint with a motion to dismiss it, the candidate filed a motion for summary judgment. He filed a motion to expedite on August 19. Observing that the candidate had known since May that he would be excluded from the ballot, the district court also concluded that the complaint should be dismissed on the merits. In 2013, the court of appeals agreed.

Topics: Getting on the ballot; intervention; laches.

Too-Early Ballot Access Requirement for New Political Parties (PDF)

California Justice Committee v. Bowen (Percy Anderson, C.D. Cal. 2:12-cv-3956)

A month in advance of a primary election, and six months in advance of the general election, minor parties filed a federal complaint challenging the state's ballot-access law for new political parties. The district judge issued a preliminary injunction without argument two weeks later. The state had not justified requiring ballot petition signatures for the general election to be submitted 135 days before the primary election. Following a later bench trial, the judge issued a permanent injunction.

Topic: Getting on the ballot.

Strict Application of Campaign Filing Requirements

Somers v. All Improperly Filed Candidates (3:12-cv-1191) and Smith v. South Carolina State Election Commission (3:12-cv-1543) (Cameron McGowan Currie, D.S.C.)

Many candidates were disqualified from primary ballots following a state supreme court's strict interpretation of a candidacy filing statute. A candidate who was not disqualified filed a federal action attacking the disqualifications. The district court determined that a candidate who was not disqualified and who was not suing as a voter lacked standing for the suit. In a related case, disqualified candidates filed a federal action arguing that the state supreme court decision could not have effect without preclearance pursuant to section 5 of the Voting Rights Act. A three-judge court determined that the state court's interpretation of the statute comported with the statute's plain meaning, so it could not be a change requiring preclearance.

Topics: Getting on the ballot; campaign materials; section 5 preclearance; three-judge court; recusal; case assignment; intervention; laches.

A Campaign Manager's Suit to Get His Candidate on the Ballot

Woodard v. Allegheny County Board of Elections (Nora Barry Fischer, W.D. Pa. 2:12-cv-535)

The campaign manager for a special-election candidate for the state legislature filed a pro se federal complaint seeking relief from the disqualification of the candidate's ballot petition signatures. At 4:00 p.m. on the day that the complaint was filed, the district judge conducted a 45-minute telephonic hearing. The judge dismissed the complaint because of the plaintiff's lack of standing to pursue his candidate's case and because the case sought relief from disappointing rulings already issued by the commonwealth's courts in contravention of the *Rooker-Feldman* doctrine, which states that among federal courts only the Supreme Court has appellate jurisdiction over state court proceedings.

Topics: Getting on the ballot; pro se party; matters for state courts.

Unconstitutional Residency Requirement for Circulating Ballot Petitions

Perry v. Judd (3:11-cv-856) and Shuttleworth v. Moran (3:12-cv-257) (John A. Gibney, Jr., E.D. Va.)

Two weeks before absentee ballots were to be ordered from printing companies for the 2012 Republican presidential primary in Virginia, Texas Governor Rick Perry filed a federal complaint alleging that his ballot petition was wrongfully rejected four days previously. Among his claims, Perry alleged that Virginia unconstitutionally required persons collecting petition signatures to be Virginia residents. The judge instructed the parties to provide other disqualified candidates with notice of the suit so that they could seek to intervene. On the day that ballot printing was to be ordered, the judge ruled that the ballots should not be printed until after a hearing four days later. The district judge and the court of appeals determined that Perry should have challenged ballot petition rules at the beginning of the petition period rather than at the end. The district judge also opined that it was unconstitutional to require signature gatherers to be residents. A few months later, a would-be candidate for a congressional primary election challenged the residency requirement because he caused him to be just a few signatures short of the requirement for the primary ballot. Perhaps in light of the district judge's earlier opinion, the candidate was certified for the ballot.

Topics: Getting on the ballot; laches; primary election.

Challenge to a Local Recall Election

McBride v. City of Jasper (Zack Hawthorn, E.D. Tex. 1:11-cv-443)

City councilmembers sued to enjoin a recall election on the grounds that the recall effort was motivated by race and the city improperly allowed voters in multiple council districts to sign a recall petition although only voters in a councilmember's district could vote in the recall election. The parties consented to a magistrate judge's presiding over preliminary injunction proceedings. The injunction was denied.

Topics: Section 2 discrimination; enjoining elections; enforcing orders; intervention; case assignment.

Correcting a Defective Candidacy Petition

Varner v. Husted (Algenon L. Marbley, S.D. Ohio 2:11-cv-748)

A candidate filed a federal complaint claiming that her candidacy petition was wrongfully rejected because she had withdrawn a defective petition. Similar cases were pending before Ohio's state court, so the district judge set alternate dates for a preliminary injunction hearing, depending upon how promptly the state court ruled. As it turned out, the state court's ruling was favorable to the federal plaintiff, who ultimately won her election.

Topics: Getting on the ballot; matters for state courts.

Ballot Errors for Local Election

Caudell v. Thomas (William C. O'Kelley, N.D. Ga. 2:10-cv-217)

A defendant probate judge removed to federal court an action seeking relief from ballot errors in an election for county commissioners. The composition of the commission had recently changed from a chair in post 1 and two other members in posts 2 and 3, all elected at large, to a chair elected at large and four members representing districts 1 through 4. Commissioners in districts 1 and 3 were up for election, but the ballot listed them as running for posts 1 and 3. In addition, the plaintiffs alleged malapportionment. The federal district judge remanded the ballot issue as a state matter but retained the malapportionment challenge for regular proceedings. The parties, however, stipulated to a dismissal.

Topics: Election errors; matters for state courts; malapportionment; removal.

Exclusion from the Ballot Because of Invalid Ballot Petition Signatures

Briscoe v. Biggs (Eric F. Melgren, D. Kan. 2:10-cv-2488)

A would-be independent candidate for Congress filed a pro se petition for a writ of mandamus ordering his inclusion on the November ballot on the grounds that he was excluded because of improperly invalidated ballot petition signatures. The court denied immediate relief for lack of a likelihood of success on the merits and to protect the public interest in orderly elections.

Topics: Getting on the ballot; pro se party.

Valid Recall Signatures

Davenport v. County of Genesee (Arthur J. Tarnow, E.D. Mich. 2:10-cv-13503)

When it was determined that a petition to recall the mayor of Flint, Michigan, did not have enough valid signatures to qualify for a recall election, the recall campaign filed an action in state court challenging how signatures were invalidated. The county removed the action to federal court, which denied a preliminary injunction 15 days after the case was removed.

Topics: Getting on the ballot; case assignment.

Fraudulently Withdrawing from a Ballot

New York State Republican Committee v. New York State Board of Elections (Richard J. Arcara, W.D.N.Y. 1:08-cv-810)

In a congressional election in New York, the Republican Party alleged that the Working Families Party's primary winner falsely claimed to be a resident of the District of Columbia so that the Democratic Party nominee could be named also a replacement Working Families Party nominee. The complaint was filed on the Friday before the election, and the court heard arguments that day by telephone. The district judge granted the Republican Party an injunction at 10:17 p.m., and the court of appeals affirmed on Monday.

Topics: Getting on the ballot; party procedures; primary election.

Ballot Petition Deadline for Minor Parties

Baldwin v. Cortés (Yvette Kane, M.D. Pa. 1:08-cv-1626)

A minor party's complaint alleged that it was improper for the state to require minor parties to submit ballot petitions earlier and with more signatures than what was required for major parties. The court of appeals affirmed a judgment by the district court of no impropriety in the ballot access requirements.

Topics: Getting on the ballot; case assignment.

Substituting Minor Party Presidential Candidates

Barr v. Galvin (Nathaniel M. Gorton, D. Mass. 1:08-cv-11340)

A minor party filed a federal complaint seeking an order allowing them to substitute its nominees for President and Vice President for the names used to gather ballot application signatures before the party's nominating convention. The judge ruled in favor of the party because it was not clear whether statutory provisions on substitution of candidates applied to minor parties' presidential candidates. After the election, the court of appeals determined that the statutory vagueness should be resolved by state court interpretation.

Topics: Getting on the ballot; matters for state courts.

Providing Election Data Only to Major Parties

Green Party of Michigan v. Land (Nancy G. Edmunds, E.D. Mich. 2:08-cv-10149)

Four days before a January 15 presidential primary, minor parties filed a federal complaint challenging a statute specifying that party-preference data would be given only to the major parties. Approximately one month later, after the secretary of state answered the complaint, the plaintiffs moved for a temporary restraining order. The district court held a status conference 12 days later and heard the motion two days after that. On the following day, the district court temporarily enjoined the state from providing anyone with the party-preference data. On March 26, the district court declared the provision of party-preference data only to major parties to be a violation of equal protection.

Topics: Equal protection; primary election; laches.

Party Loyalty Oath

Kucinich v. Texas Democratic Party (Lee Yeakel, W.D. Tex. 1:08-cv-7)

Two months in advance of Texas's 2008 Democratic presidential primary election, a candidate filed a federal constitutional challenge to the state party's loyalty oath for presidential candidates. The district court conducted a proceeding on the day that the case was filed. The judge and the parties agreed to a bench trial nine days later. The court ruled against the candidate at the conclusion of the trial and issued an opinion six days later. The candidate withdrew the action while it was on appeal, because he had suspended his presidential bid.

Topics: Getting on the ballot; party procedures.

Challenging a Puerto Rico Party's Registration

Puerto Ricans for Puerto Rico Party v. Dalmau (Gustavo A. Gelpi, D.P.R. 3:07-cv-1867)

A political party filed a federal complaint in the District of Puerto Rico alleging that another party had been illegally registered as a political party for the 2008 elections. The district judge dismissed the action as a matter for Puerto Rico's commonwealth courts. The court of appeals determined that the action was not necessarily foreclosed by commonwealth court decisions, and the court of appeals held that it was error for the district judge to rely on original Spanish-language commonwealth court opinions. In time, the action was dismissed as moot.

Topics: Getting on the ballot; matters for state courts; attorney fees.

Ballot Petition Signatures

Douglas v. Niagara County Board of Elections (Richard J. Arcara, W.D.N.Y. 1:07-cv-609)

On the day before a primary election, a complaint alleged that the plaintiff was wrongfully denied a place on the ballot. After the election, the judge concluded that the plaintiff was not entitled to relief.

Topics: Getting on the ballot; primary election.

Disqualification of a Candidate for Failure to Properly File Papers of Candidacy

Lawrence v. Board of Election Commissioners (Elaine E. Bucklo, N.D. Ill. 1:07-cv-566)

A would-be candidate filed a federal complaint challenging a requirement that he file with his nomination papers the receipt he received for filing his statement of economic interest. The district judge granted summary judgment to the defendants. The claims were barred by res judicata because they were not raised in an unsuccessful state court proceeding on the same matter. Nor was it unconstitutional to disqualify as a candidate someone who failed to properly file papers of candidacy.

Topic: Getting on the ballot.

Validity of Ballot Application Signatures

Stockman v. Williams (Lee Yeakel and Sam Sparks, W.D. Tex. 1:06-cv-742)

On September 19, 2006, an independent candidate for Congress filed a federal action to get his name on the ballot. The assigned judge was away that week, so another judge presided over a temporary restraining order hearing. Because absentee ballots would be issued in a few days' time, and because the plaintiff did not name all necessary defendants, immediate relief was denied. The originally assigned judge determined the following week that the case was filed too late to obtain relief.

Topics: Getting on the ballot; laches; case assignment.

Idiosyncratic Preferences for Name on Ballot

NaPier v. Baldacci (D. Brock Hornby, D. Me. 2:06-cv-151)

A minor gubernatorial candidate filed a pro se complaint two months before the 2006 general election because the state was not acceding to his orthographic preferences for his name, including the printing "Phillip" with the letters "i" represented as just dots with eyebrows and the double "l" represented with a smile under it. The federal court determined that the case was a matter for the state court.

Topics: Pro se party; matters for state court.

Excluding an Office from Absentee Ballots

Price v. Albany County Board of Elections (Gary L. Sharpe, N.D.N.Y. 1:06-cv-1083)

The complaint alleged that New York's excluding county party committee positions from absentee ballots in a primary election, to be held in four days, violated the First Amendment. The judge issued as limited a temporary restraining order as possible: he ordered absentee ballots prepared for the party positions, but he ordered them segregated so that a determination of whether to count them could be made after the election.

Topics: Absentee ballots; party procedures; ballot segregation; primary election.

Signature Requirements for a Ballot Question

Protect Marriage Illinois v. Orr (Elaine E. Bucklo, N.D. Ill. 1:06-cv-3835)

On July 14, 2006, proponents of an advisory question for the 2006 general election in Illinois filed a constitutional challenge to the petition requirements for getting their question on the ballot. The plaintiffs claimed that the number of signatures required was too onerous, as was the requirement that the signatures and the signers' addresses match voter registration cards. On August 2, the district judge granted the defendants' motion to dismiss the case. The court of appeals affirmed.

Topics: Getting on the ballot; ballot measure; intervention.

Pro Se Effort to Enjoin Mayoral Election

Brown v. Glynn County Board of Elections and Voter Registration (Anthony A. Alaimo, S.D. Ga. 2:05-cv-218)

Late on the Friday afternoon before the 2005 general election, a would-be candidate for mayor filed a pro se complaint in federal court seeking to reschedule a mayoral election so that she could be included on the ballot; she had been disqualified for not being a resident long enough. The district judge had already left for the weekend, but he heard the case on Monday afternoon. He denied the plaintiff a new election but ordered the county to preserve and tally all write-in ballots. The plaintiff did not prevail in the election.

Topics: Getting on the ballot; enjoining elections; pro se party; write-in candidate.

Challenge to Removal from Ballot

Singleton v. Alabama Democratic Party (Mark E. Fuller, M.D. Ala. 2:04-cv-1027)

A candidate filed a federal action because a state court had removed her name from the ballot. The federal court denied her relief because she had not filed the action until after absentee voting had begun and because under the *Rooker-Feldman* doctrine only the Supreme Court has appellate jurisdiction over state court proceedings.

Topics: Getting on the ballot; laches; matters for state courts; section 5 preclearance; three-judge court; enjoining elections; enjoining certification.

Deputy Sheriff's Run for Sheriff and the Hatch Act

Caldwell v. United States Office of Special Counsel (Freda L. Wolfson, D.N.J. 1:05-cv-5126)

A deputy sheriff filed a federal complaint seeking relief and clarification of his right to run for sheriff as a Republican nominee after the Democratic incumbent transferred him to a department receiving federal funds so that his candidacy might violate the Hatch Act. The district judge held telephone conferences with the parties one and two days later. At a hearing five days after the complaint was filed, the parties announced a confidential settlement.

Topics: Getting on the ballot; case assignment.

Ralph Nader Off Ohio's Ballot in 2004

Blankenship v. Blackwell (Edmund A. Sargus, Jr., S.D. Ohio 2:04-cv-965) and Nader v. Blackwell (George C. Smith, S.D. Ohio 2:04-cv-1052)

Because Ralph Nader failed to qualify for the 2004 presidential ballot in Ohio, his supporters filed a federal complaint challenging the constitutionality of a requirement that ballot petition circulators be state residents. Because of unclean hands—petition circulators had falsely claimed to be state residents—a district judge denied the plaintiffs immediate relief. On election day, the Nader campaign challenged Ohio's requirement that write-in candidates file a declaration of intent 50 days before the election. The court of appeals determined that the secretary of state had qualified immunity.

Topics: Getting on the ballot; write-in candidate; laches; intervention; case assignment.

Challenging the Invalidation of Ballot-Access Signatures

Van Auken v. Blackwell (Gregory L. Frost, S.D. Ohio 2:04-cv-891)

In 2004, the Socialist Equality Party failed to qualify a presidential candidate in Ohio for the general election and sought emergency relief in federal court. The district court denied immediate relief because the party had not shown that Ohio's secretary of state had failed to provide a legally required review of their case or that they could not obtain mandamus relief from Ohio's state courts if merited.

Topics: Getting on the ballot; matters for state courts.

Minimum County Requirements for Ballot Petitions

Committee to Regulate and Control Marijuana v. Heller (James C. Mahan, D. Nev. 2:04-cv-1035)

Supporters of an initiative to regulate marijuana filed a federal complaint, claiming that Nevada had improperly disqualified signatures on their ballot petition. Three days later, the district judge enjoined the state from taking any action that would prevent the court from providing the plaintiffs with further injunctive relief. One month later, the judge invalidated a state provision requiring a minimum number of signatures from a supermajority of counties for a ballot measure, because the provision favored voters in small counties. Because the judge left in place a provision that resulted in the disqualification of signatures by voters who may not have registered before signing the ballot petition, the initiative failed to qualify for the election. The court of appeals affirmed.

Topics: Ballot measure; getting on the ballot; equal protection; registration procedures.

Disqualification of a Primary Election Candidate for Previously Running as an Independent

Swanson v. Pitt (Myron H. Thompson, M.D. Ala. 2:04-cv-534)

A would-be candidate for the United States Senate filed a pro se federal complaint alleging that it was improper to exclude him as a candidate in a primary election for having previously run as an independent. The district judge declined to issue a temporary restraining order; later, he granted the defendants summary judgment.

Topics: Getting on the ballot; primary election; pro se party.

Expulsion from Primary for Disloyalty to Party

McGinley v. Alabama Republican Party (W. Harold Albritton, 2:04-cv-434) and Jones v. Alabama Republican Party (Mark E. Fuller, No. 2:04-cv-500) (M.D. Ala.), Smith v. Alabama Republican Party (1:04-cv-360) and McGinley v. Alabama Republican Party (1:04-cv-579) (Callie V.S. Granade, S.D. Ala.), and McGinley v. Alabama Republican Party (U.W. Clemon, N.D. Ala. 2:04-cv-2203)

A federal complaint sought restoration to a primary ballot for state board of education. The plaintiff alleged that she was stricken from the ballot because of a false rumor that she had left the party. The state's supreme court had stayed a state court order restoring her to the ballot pending appeal. After the state court determined that the party was entitled to strike the candidate from its ballot, the federal judge dismissed the action as barred by the *Rooker-Feldman* doctrine that among federal courts only the Supreme Court has appellate jurisdiction over state court proceedings. Post-election actions to nullify the results filed in the state's other two districts were unsuccessful.

Topics: Getting on the ballot; matters for state courts; primary election; party procedures.

Disqualification as an Independent Candidate for Voting in a Primary Election

McClure v. Galvin (Richard G. Stearns, D. Mass. 1:04-cv-10826)

An attorney and would-be candidate for state senate filed a pro se federal complaint alleging that he was improperly denied a place on the ballot as an independent candidate because he had voted in a primary election. Three weeks later, the court denied the plaintiff injunctive relief because of a Supreme Court precedent upholding a party disaffiliation requirement.

Topics: Getting on the ballot; pro se party; primary election.

Including a Nickname on the Ballot

House v. Alabama Republican Party (R. David Proctor, N.D. Ala. 2:04-cv-703)

Chris “The Teacher” House filed a pro se federal complaint because a party would not include his nickname on the primary ballot for election to the state board of education. Among the claims was that the party’s refusal to do so amounted to an election change requiring preclearance pursuant to section 5 of the Voting Rights Act because it had listed his nickname before. The Justice Department declared that it had no objection to the exclusion of nicknames, so the section 5 claim was dismissed. The district judge temporarily enjoined printing of the ballots while he considered the case. On consideration, he dismissed the federal claims with prejudice and the state claims without prejudice.

Topics: Primary election; pro se party; section 5 preclearance; matters for state courts.

Challenging Both Nominating and Voting Procedures

White-Battle v. Democratic Party of Virginia (Henry C. Morgan, Jr., E.D. Va. 2:03-cv-897)

A plaintiff who had desired to be a party nominee for an election to clerk of court filed a pro se federal complaint alleging improprieties in both nomination and voting procedures. The motion was heard and denied six days later. Six months after that, the court granted summary judgment to the defendants.

Topics: Getting on the ballot; pro se party.

Ballot Access Requirements in Puerto Rico

López-Rutol v. Gracia (Hector M. Laffitte, D.P.R. 3:03-cv-1880)

A would-be independent candidate for Puerto Rico’s senate filed a federal complaint challenging ballot petition requirements for candidates. The court denied the plaintiff immediate relief. On the one hand, the plaintiffs “waited for the eleventh hour to file the present petition for injunctive relief”; on the other hand, they “erroneously believe[d] that a law imposing any burden upon the right to vote must be subject to strict scrutiny.”

Topics: Getting on the ballot; laches.

Serving in the Army Reserves While Running for Office

Neel v. Pippy (Arthur J. Schwab, W.D. Pa. 2:03-cv-302)

Eight days before a special election to fill a vacancy in Pennsylvania’s senate, three voters filed a federal complaint to block the election of a candidate who was a reserve officer recently called to active duty, claiming that the candidacy violated the Military Code. The district court ordered immediate briefing and held a hearing three days later, after which the court concluded that the Military Code did not afford the plaintiffs a private right of action for their case. The military granted the candidate a waiver, and he won.

Topics: Getting on the ballot; intervention.

Disqualifying Inactive Voters from Candidacy Petitions

Cunningham v. Chicago Board of Election Commissioners (James B. Moran, N.D. Ill. 1:03-cv-1160)

A February 18, 2003, federal complaint alleged improper disqualification of candidates because of petition signatures by inactive voters. On February 21, the district judge denied the plaintiffs immediate relief because they had not shown that their preferred candidates would be on the ballot but for the disqualification of signatures by inactive voters. The issue was resolved by stipulation in a subsequent case.

Topic: Getting on the ballot.

Signature Requirements for Independent and New-Party Candidates

Delaney v. Bartlett (Frank W. Bullock, Jr., M.D.N.C. 1:02-cv-741)

On September 6, 2002, a write-in candidate for the U.S. Senate filed a federal challenge to the state's signature requirement for getting on the ballot as an independent candidate. The district court denied pre-election relief, and the candidate was defeated. In 2004, the judge determined that general-election ballot signature requirements for independent candidates—based on the number of registered voters—and new-party candidates—based on the number of voters in the last gubernatorial election—were an unconstitutional combination. The state modified its requirement for independent candidates to be similar to its requirement for new-party candidates.

Topics: Getting on the ballot; equal protection.

Last-Minute Change to Ballot Petition Due Date and Interference with Write-In Votes

Swanson v. Alabama (2:02-cv-644) and Campbell v. Bennett (2:02-cv-784) (Myron H. Thompson) and Swanson v. Bennett (2:02-cv-1244) (W. Harold Albritton) (M.D. Ala.)

Two lawsuits, one initially filed pro se, challenged the constitutionality of a last-minute moving up of the due date for independent candidates' ballot petition signatures. The change had to be precleared pursuant to section 5 of the Voting Rights Act, and it was not known until a week before the new date that it would be precleared in time for the pending elections. The district judge denied temporary restraining orders but issued preliminary injunctions placing aggrieved candidates who otherwise had submitted sufficient numbers of signatures. A post-election action by the original pro se candidate and plaintiff was unsuccessful. On summary judgment after the election, the judge found the sudden change in due date to be a moot issue and other constitutional claims to be without merit.

Topics: Getting on the ballot; pro se party; enjoining certification.

Preclearance of a Last-Minute Ballot Disqualification

Connors v. Bennett (W. Harold Albritton, M.D. Ala. 2:02-cv-482)

A state party chair filed a federal action challenging a state court order restoring a candidate to a primary ballot as a change in voting practices requiring preclearance pursuant to section 5 of the Voting Rights Act. The party excluded the candidate because of a finding concerning the candidate's residency, but the state court restored the candidate to the ballot. The court ordered service of the complaint on the candidate to afford him an opportunity to intervene. The court ruled against the plaintiff, finding a customary practice of last-minute changes to ballot certifications to correct clerical errors and to accommodate voluntary withdrawals, but not to effect contested disqualifications.

Topics: Getting on the ballot; intervention; section 5 preclearance; three-judge court; primary election; matters for state courts.

Seeking Two Nominations at the Same Time

Avila v. Sandoval (John W. Darrach, N.D. Ill. 1:02-cv-1222)

A candidate for member of a water reclamation district commission filed a federal complaint seeking to have his opponent removed from the primary ballot because the opponent was also seeking a nomination for the state senate. The district judge granted the plaintiff immediate relief, and the opponent withdrew from the commission race.

Topics: Getting on the ballot; primary election; absentee ballots.

Ballot Access for a Minor Party in a Special Congressional Election

Green Party of Arkansas v. Priest (George Howard, Jr., E.D. Ark. 4:01-cv-586)

A September 4, 2001, federal complaint challenged a state's ballot access laws, which made it impossible for the Green Party to offer a candidate in a November 20 special election to replace a member of Congress who had been given a presidential appointment. The district judge tentatively granted the plaintiffs relief after a September 13 proceeding, and issued an opinion confirming the injunction four days later: "The State has no compelling interest in allowing unrecognized parties to participate in some elections but not others." The plaintiffs were awarded \$10,165.58 in attorney fees and costs.

Topics: Getting on the ballot; attorney fees.

Right to Form a Third Party

Public Interest v. Armstrong County Board of Elections (Donald E. Ziegler, W.D. Pa. 2:01-cv-1616)

A voter, a candidate, and a political organization filed a federal complaint challenging exclusion of the candidate from the ballot for a school board. The candidate nominated by the Democratic and the Republican Party was a suspect in jewelry thefts that included the voter as a victim. The voter and others tried to launch a new political party with the candidate as its nominee. The candidate was disqualified because he was a registered Democrat. After a hearing, the court granted judgment to the plaintiffs.

Topic: Getting on the ballot.

Unlawful Bill of Attainder

Caudell v. City of Toccoa (William C. O'Kelley, N.D. Ga. 2:01-cv-105)

A federal complaint challenged a new state law forbidding members of a city commission from serving as a member of a hospital authority board, which affected only the plaintiff. The district judge consolidated an injunction hearing with a trial on the merits and struck down the new law as an invalid bill of attainder that was also in conflict with other constitutional and statutory requirements.

Topics: Getting on the ballot; equal protection; section 5 preclearance.

Disqualified Presidential Electors

Phillips v. Galvin (Reginald C. Lindsay, D. Mass. 1:00-cv-12067)

A minor party's presidential campaign filed a federal complaint seeking an injunction placing the party's candidates on the November ballot despite a finding that some of its proposed presidential electors were not qualified. The court ruled against the party, in part because of laches.

Topics: Getting on the ballot; laches; interlocutory appeal.

Greater Ballot Signature Requirement for Presidential Candidates

Nader 2000 Primary Committee, Inc. v. Cenarrusa (Mikel H. Williams, D. Idaho 1:00-cv-503)

The Ralph Nader campaign's September 7, 2000, federal complaint alleged that Idaho wrongfully required more ballot qualification signatures for President than it required for other statewide races. At a September 14 hearing, the district court denied the campaign injunctive relief, finding the signature requirement to be reasonable and achievable.

Topic: Getting on the ballot.

Ballot Filing Fee

Belitskus v. Pizzingrilli (A. Richard Caputo, M.D. Pa. 3:00-cv-1300)

Eight days in advance of a filing deadline, a federal complaint objected to a ballot filing fee. The district judge denied immediate relief on the following day and set the matter for hearing two days after that. After the hearing, the judge ordered the commonwealth to provide an alternative to the fee for those unable to pay. The court of appeals affirmed.

Topics: Getting on the ballot; equal protection; attorney fees.

Certification as a Write-In Candidate

Pearlman v. Gonzales (Martha Vázquez, D.N.M. 6:98-cv-1160) and Pearlman v. Vigil-Giron (Bruce D. Black, D.N.M. 1:00-cv-1475)

A pro se litigant filed a federal complaint challenging his exclusion from the gubernatorial ballot as a Green Party candidate because the secretary of state determined that the Green Party had become a major party requiring nomination by primary election. The district judge opined that the plaintiff's exclusion was improper, but she held that the action was barred by the Eleventh Amendment. Two years later, the plaintiff filed another federal complaint seeking an order that the state provide for write-in presidential candidates. A different district judge also determined that the suit was barred by the Eleventh Amendment, and moreover it had been filed too late for the equitable relief sought.

Topics: Getting on the ballot; write-in candidate; matters for state courts; laches; pro se party; primary election.

BALLOT MEASURES

Electronic Bingo and Voting Rights

Johnson v. Riley (Sharon Lovelace Blackburn, N.D. Ala. 7:10-cv-2067)

Voters filed a federal complaint challenging police actions against electronic bingo operations as a violation of the voting rights of the voters who approved the operations. The complaint included a claim that executive orders and police actions violated the Voting Rights Act because they had not received section 5 preclearance. The district judge denied as moot a motion for a temporary restraining order preserving a state-court injunction, because the state court had denied a motion to dissolve its order. The following year, the court accepted a voluntary dismissal.

Topics: Section 5 preclearance; matters for state courts; ballot measure.

Certification Deadline for Ballot Initiative Signatures

Personhood Mississippi v. Hood (Daniel P. Jordan III, S.D. Miss. 3:10-cv-71)

Supporters of a ballot initiative alleged in a federal complaint unconstitutional application of the year-long signature period because county election officials were sometimes taking too long to certify ballot petition signatures so that the initiative supporters could not efficiently determine where to allocate signature-drive resources. The parties appeared in chambers on the day that the complaint was filed, and the state filed a response three days later. Four days after that, the district judge abstained from providing immediate relief because resolution of issues of state law could moot the federal constitutional issues. Later, the court dismissed the action on stipulation.

Topics: Ballot measure; getting on the ballot.

Public Disclosure of Referendum Petition Signatures

Doe v. Reed (Benjamin H. Settle, W.D. Wash. 3:09-cv-5456)

Persons who signed a referendum petition filed a federal complaint seeking to enjoin the state's releasing the identities of the over 138,500 signatories. The district court held a proceeding that afternoon and a hearing on the following day, which the state defendants chose not to attend. The court issued a temporary restraining order and held a preliminary injunction hearing a little more than a month later. The district court granted a preliminary injunction, but the court of appeals reversed. At the beginning of its term, the Supreme Court stayed the reversal, reinstating the injunction, but the Supreme Court affirmed the court of appeals at the end of the Court's term. On remand, the district court denied the plaintiffs' as-applied challenge and lifted the injunction. After the petitions were released on the Internet, the court of appeals determined that the case was moot.

Topics: Ballot measure; intervention.

Grievance About a Change in Mayoral Power (PDF)

Winstead v. Stodola (William R. Wilson, Jr., E.D. Ark. 4:07-cv-682)

Five days before a special election, a federal complaint challenged a ballot measure that would convert the position of Little Rock mayor from part time to full time. Following two recusals, the district judge then assigned the case denied immediate relief on the day before the election.

Topics: Ballot measure; case assignment; recusal; class action.

Constitutionality of a Ballot Measure

Ajax Gaming Ventures, LLC v. Brown (William E. Smith, D.R.I. 1:06-cv-336)

The suit challenged the constitutionality of a ballot measure in an upcoming election. The court denied immediate relief, because constitutionality could be assessed after the election. The measure did not pass.

Topics: Ballot measure; intervention.

Discrepancies Between Ballot Petitions and Ballot Text (PDF)

Martinez v. Monterey County (Jeremy Fogel, N.D. Cal. 5:05-cv-2950)

A federal complaint challenged a ballot initiative as different in wording from the text circulated for ballot-access signatures and challenged the change in wording as a change in election procedures requiring preclearance pursuant to section 5 of the Voting Rights Act. In parallel litigation, the state's supreme court provisionally ruled that the electorate should not be denied an opportunity to vote on the initiative unless the text discrepancies were sufficiently misleading. A three-judge federal district court declined to interfere with state proceedings because the state court also had jurisdiction over the federal question. The initiative failed and the state's supreme court subsequently ruled that the text discrepancies were not so great as to merit an injunction against including the initiative on the ballot.

Topics: Ballot language; ballot measure; section 5 preclearance; matters for state courts; three-judge court; case assignment.

Preclearance of an Election to Create a Hospital District

Hernandez v. Kirkham (Marcia A. Crone, E.D. Tex. 1:05-cv-134)

Eleven days after an election to create a hospital district, five residents filed a federal complaint charging that the election and earlier precinct changes had not received preclearance pursuant to section 5 of the Voting Rights Act. At a district court hearing two days later, the parties agreed to a temporary restraining order that enjoined the conveyance of any property to the hospital district until the end of April. The Justice Department granted preclearance in April, so the district court action was dismissed.

Topics: Section 5 preclearance; three-judge court.

Initiative to Reallocate Electoral Votes

Napolitano v. Davidson (Lewis T. Babcock, D. Colo. 1:04-cv-2114)

A pro se plaintiff challenged a ballot initiative that would change the allocation of the state's Electoral College votes in the same election, alleging uncertainty in the strategic value of presidential votes. After expedited hearing, the court dismissed the complaint as too speculative.

Topics: Ballot measure; pro se party; intervention; recusal.

Preclearance for a Zoning Election

Watson v. Fuhrmeister (Karon O. Bowdre, N.D. Ala. 2:03-cv-1960)

One week before a special election, voters filed a federal complaint alleging that the special election was in violation of section 5 of the Voting Rights Act because the election's question, whether a county precinct would be subject to zoning by a county planning commission, pertained to zoning laws that had not been precleared. Defendants acknowledged that the laws in question had not been precleared, so the court enjoined the election. The action was dismissed on notice of preclearance.

Topics: Enjoining elections; section 5 preclearance; ballot measure.

Enjoining Nonbinding Voting That Allots One Vote Per House or Apartment Building (PDF)

Andrade v. Pulido (Cormac J. Carney, C.D. Cal. 8:03-cv-1157)

A federal complaint, which was filed two days before a nonbinding mail-in election was to end, challenged as discriminatory the election on retaining traffic barriers, because one vote was assigned to each house or apartment building. The district judge issued a temporary restraining order on the following day and ultimately ruled against a related election held three years previously using the same vote allocation.

Topics: Enjoining elections; ballot measure; equal protection; attorney fees.

Ballot Petitions Do Not Have to Be Multilingual (PDF)

Padilla v. Lever (Alicemarie H. Stotler, 8:02-cv-1145), Imperial v. Castruita (R. Gary Klausner, 2:05-cv-8940), and Chinchay v. Verjil (Audrey B. Collins, 2:06-cv-1637) (C.D. Cal.) and Madrigal v. County of Monterey (5:06-cv-1407), Melendez v. Board of Supervisors (5:06-cv-1730), Rangel v. County of Monterey (6:06-cv-2202), and Rancho San Juan Opposition Coalition v. Board of Supervisors (6:06-cv-2369) (James Ware) and Heredia v. Santa Clara County (Ronald M. Whyte, 6:06-cv-4718) (N.D. Cal.)

After nearly four years of litigation, the U.S. Court of Appeals for the Ninth Circuit determined that recall petitions do not have to be offered in multiple languages. The litigation began with a December 12, 2002, complaint challenging a petition to recall a member of Santa Ana, California's school board in a February 4 election. Ultimately, the litigation included complaints filed in 2005 and 2006 as well.

Topics: Ballot measure; recusal.

Overturning State Court Blocking of a Ballot Initiative

Anderson v. Gale (Richard G. Kopf, D. Neb. 4:02-cv-3257)

Supporters of a ballot initiative filed a federal complaint seeking relief from a state court invalidation of the initiative as concerning more than one subject. On the day that the complaint was filed, the federal judge held a conference call with the parties and scheduled a hearing for two days later. The judge denied immediate relief so as to not interfere unduly with the coming election and because he found no constitutional problem with the one-subject rule.

Topics: Ballot measure; getting on the ballot; intervention; matters for state courts.

Unconstitutionality of a Referendum

Nogueras Cartagena v. María Calderón (Hector M. Laffitte, D.P.R. 3:01-cv-1789)

A Puerto Rico voter filed a pro se federal complaint on June 13, 2001, challenging the constitutionality of a local referendum and a later federal referendum on the U.S. military's continued use of the island of Vieques for explosives exercises. Respecting the imminent local referendum, the court ruled that the plaintiff did not have standing to pursue a general grievance in court. Later, the court issued an order to show cause why claims concerning the federal referendum should not be dismissed, and then the court dismissed those claims.

Topics: Ballot measure; enjoining elections; pro se party.

Enjoining a Referendum on a Property Transfer

Petitioners Alliance v. City Council (Sharon Lovelace Blackburn, N.D. Ala. 2:01-cv-497)

On the day before a special election, five voters filed a federal complaint seeking to enjoin transfer of assets in frustration of a ballot question, which was a referendum on the city's transfer of assets to a water and sewer board. The judge denied immediate injunctive relief and, in time, granted the defendants a dismissal because the plaintiffs had not alleged infringement of the right to vote.

Topic: Ballot measure.

CAMPAIGN ACTIVITIES

Campaign Contribution Limits for Recall Petition Signatures (PDF)

Citizens for Clean Government v. San Diego (Napoleon A. Jones, Jr., S.D. Cal. 3:03-cv-1215)

A June 20, 2013, federal complaint challenged contribution limits for a city council recall effort. In an interlocutory appeal, the court of appeals affirmed the denial of immediate relief. The recall effort did not qualify for the ballot, and the incumbent was reelected. On appeal from the final judgment, the court of appeals ruled in 2007 that the district court had not required sufficient justification for the contribution limits.

Topics: intervention; case assignment.

Electioneering Communications

Hispanic Leadership Fund, Inc. v. Federal Election Commission (T.S. Ellis III, E.D. Va. 1:12-cv-893)

An August 10, 2012, federal complaint sought a declaration that planned advertisements did not violate fund-disclosure regulations imposed on political advertisements published during the time period preceding the 2012 presidential election. The district judge ruled on October 4 that three of five draft advertisements were electioneering communications subject to regulation because they referred to the presidential candidate for reelection.

Topic: Campaign materials; campaign finance.

Venue for a Suit Against the Federal Election Commission

Hispanic Leadership Fund v. Federal Election Commission (John A. Jarvey, S.D. Iowa 4:12-cv-339)

A group wishing to run a political advertisement filed a federal complaint against the Federal Election Commission in the Southern District of Iowa because the Commission's advisory to another group suggested that the Commission might not approve the plaintiff's advertisement. Ten days after the complaint was filed, the district court dismissed the action, determining that it should have been filed in Washington, DC.

Topics: Corporate electioneering; campaign materials; case assignment.

Constitutionality of Proscriptions on False Statements About Candidates

Susan B. Anthony List v. Driehaus (1:10-cv-720) and Coalition Opposed to Additional Spending & Taxes v. Ohio Elections Commission (1:10-cv-754) (Timothy S. Black and Susan J. Dlott, S.D. Ohio)

Two actions filed in late October 2010 challenged the constitutionality of a Ohio statute proscribing false statements about candidates for office. The judge in the first case stayed the federal case pending state executive and judicial proceedings, pursuant to *Younger v. Harris*. The judge in the second case also denied immediate injunctive relief, and the two cases were consolidated for further proceedings after the election. Dismissals for lack of live controversies were reversed by the Supreme Court. The court of appeals affirmed dismissal of a candidate's defamation counterclaim.

Topics: Campaign materials; matters for state courts; recusal; case assignment; interlocutory appeal.

Debate Participation

Amsterdam v. KITV 4 (David Alan Ezra, D. Haw. 1:10-cv-253) and Moseley v. Hawaii (Susan Oki Mollway, D. Haw. 1:10-cv-255)

Two minor candidates for a special congressional election filed pro se emergency actions in the federal court to compel their inclusion in separate televised candidate forums. The district judges denied the plaintiffs relief on the papers.

Topics: News media; campaign materials; pro se party.

Constitutionality of a Campaign Expenditure Reporting Statute

National Organization for Marriage v. McKee (D. Brock Hornby and John H. Rich III, D. Me. 1:09-cv-538)

Advocacy organizations filed a federal challenge to campaign finance reporting regulations two weeks before an election including a ballot initiative. Able to rule before the election, the court denied the plaintiffs injunctive relief. After the election, the court of appeals affirmed the legal holding.

Topics: Campaign finance; ballot measure.

Campaign Finance Regulations for Candidates Opposing Self-Funded Candidates

McComish v. Brewer (Roslyn O. Silver, D. Ariz. 2:08-cv-1550)

On August 21, 2008, candidates for office in Arizona filed a federal complaint challenging a campaign finance provision that provided a benefit to candidates whose challengers exceeded statutory thresholds of expenditures. The suit was filed eight weeks after a Supreme Court decision invalidating a similar law. Reluctant to disrupt the finances of an ongoing campaign season, the district court denied immediate injunctive relief. After full litigation, the district court struck down the campaign finance scheme and the Supreme Court ultimately affirmed the district court.

Topics: Campaign finance; laches; attorney fees.

Last-Minute Challenge to a Debate Exclusion (PDF)

Barr v. Saddleback Valley Community Church (David O. Carter, C.D. Cal. 8:08-cv-927)

On a Friday afternoon, the Libertarian Party's candidate for President filed a federal complaint challenging his exclusion from a candidate's forum to be held the next day. The district judge denied immediate relief, noting that laches is especially problematic in ex parte proceedings.

Topic: Laches.

Improper Support for School Board Incumbents (PDF)

Jacob v. Board of Directors (G. Thomas Eisele, E.D. Ark. 4:06-cv-1007)

A federal complaint alleged that incumbent school board candidates, and not other candidates, were improperly allowed to appear before school district staff meetings. Just over two weeks later, the district judge denied the plaintiffs immediate relief on a finding that the school board had not conspired to advance the incumbents' candidacies. The incumbents were defeated in the election.

Topics: Early voting; intervention; equal protection.

Issue Ads During Election Season

Christian Civic League of Maine, Inc. v. FEC (Louis F. Oberdorfer, D.D.C. 1:06-cv-614)

An issue-advocacy organization filed a declaratory action in the U.S. District Court for the District of the District of Columbia to challenge a proscription on issue advertising that mentions a candidate close to an election. A three-judge court denied a preliminary injunction against enforcement of the proscription.

Topics: Campaign materials; corporate electioneering; three-judge court; intervention; recusal; interlocutory appeal.

Get-Out-The-Vote Canvassing

Service Employees International Union v. Municipality of Mt. Lebanon (Arthur J. Schwab, W.D. Pa. 2:04-cv-1651)

The district court was asked to resolve the constitutionality of county requirements for persons who wanted to go door-to-door over the weekend before a general election to encourage voting. In the short term, the counties relaxed their restrictions; in the long term, they revised them.

Topics: Door-to-door canvassing; recusal.

ELECTION DATES

Consent Litigation Over Section 5 Preclearance

Walker v. Cunningham (Lisa Godbey Wood, S.D. Ga. 2:12-cv-152)

After the Justice Department denied preclearance for county district lines already used in a July 2012 primary election, the incumbents and the county engaged in consent litigation to obtain new district lines from the federal court. A three-judge court enjoined use of the election results. Enlisting the cooperation of the state's reapportionment office, the court drew new district lines, which were used for a special election to be held in May 2013.

Topics: Section 5 preclearance; three-judge court; enjoining elections; intervention; primary election.

Election Day on the Last Day of Passover

Herzfeld v. District of Columbia Board of Elections and Ethics (Emmet G. Sullivan, D.D.C. 1:11-cv-721)

A rabbi filed a federal complaint when he realized that a special election to fill municipal vacancies was going to be held on the last day of Passover, a day when he could not vote until after the polls would be closed. The district judge scolded the board of elections for not seeking a court order allowing them to adjust the statutorily-mandated special election date, but the judge denied the plaintiff immediate injunctive relief, because the rabbi had early and absentee voting alternatives. The statute was subsequently amended by an act of Congress.

Topics: Polling hours; intervention; absentee ballots.

Preclearance for a Special Election

Buell v. Monterey County (Jeremy Fogel, N.D. Cal. 5:10-cv-1952)

A federal complaint alleged that polling place consolidations and the date of the election had not been precleared for a special election to fill a vacancy in the state senate, as required by section 5 of the Voting Rights Act for a county overlapping with the senate district. By the time a three-judge court met to hear the case, the special election had been precleared.

Topics: Poll locations; section 5 preclearance; three-judge court; enjoining elections; intervention.

Rushed Election to Fill a Vacancy

Butler v. City of Columbia (Cameron McGowan Currie, D.S.C. 3:10-cv-794)

When a city council member resigned, the city had to decide whether to follow the normal schedule for a replacement election or to add the replacement election to an earlier city election already scheduled. The state's supreme court determined that the replacement election should be on the earlier date. A retired law professor filed a pro se complaint claiming that the early election had not been precleared pursuant to section 5 of the Voting Rights Act. A three-judge court enjoined the early election because it had not been precleared.

Topics: Section 5 preclearance; three-judge court; enjoining elections; pro se party; intervention.

Approving a Compressed Special Election

Chicago Board of Election Commissioners v. Illinois State Board of Elections (Samuel Der-Yeghiayan, N.D. Ill. 1:09-cv-82)

Election officials sought the blessing of a federal court to compress election deadlines, including those concerning overseas voters, to accommodate a special election set for a vacancy in the U.S. House of Representatives. The district judge approved an election schedule proposed by the parties.

Topics: Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA); absentee ballots; intervention.

Consequences of an Early Primary

Hayes v. Michigan Democratic Party (Robert J. Jonker, W.D. Mich. 1:07-cv-1237)

A party member filed a federal complaint challenging the state Democratic Party's early primary election in violation of national party rules, claiming injury because her preferred candidate decided not to participate in the primary. It was over two weeks before the plaintiff asked for expedited consideration. Less than two weeks later, the court denied immediate relief so as not to interfere with an intraparty dispute.

Topics: Party procedures; enjoining elections.

Punishment for Early Florida Primaries

Nelson v. Dean (4:07-cv-427) and Ausman v. Browning (4:07-cv-519) (Robert L. Hinkle, N.D. Fla.)

On November 20, 2007, Florida voters filed a state court complaint challenging the state's moving up the 2008 presidential primaries in violation of party rules. The case was removed to federal court on December 7, and a preliminary injunction motion was filed a week later. On January 3, 2008, the district court denied the plaintiffs preliminary injunctive relief because the consequences of the early primaries were still uncertain.

Topics: Primary election; party procedures; removal; case assignment.

Holding an Election Before University Students Can Register

May v. City of Montgomery (Myron H. Thompson, M.D. Ala. 2:07-cv-738)

The federal action challenged the moving up of a local election, because it meant that students at a predominantly black university would not be in town in time to vote. Soon after the action was filed, the Justice Department precleared the change. The federal court declined jurisdiction over state claims.

Topics: Student registration; section 2 discrimination; section 5 preclearance; three-judge court; matters for state courts; Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA).

Preclearance for a Soil and Water Conservation District

Evans v. Bennett (Beverly B. Martin, N.D. Ga. 1:04-cv-2641)

Five days in advance of a scheduled election for soil and water conservation district supervisors, two voters filed a federal complaint claiming that matters relating to the election had not received preclearance pursuant to section 5 of the Voting Rights Act. The election was canceled and preclearance was obtained three months later.

Topics: Section 5 preclearance; enjoining elections.

Nullifying an Election Held Without Preclearance

Lyde v. Glynn County Board of Elections (Anthony A. Alaimo, S.D. Ga. 2:04-cv-91)

Voters filed a federal complaint to enjoin an election for members of a county board of education until changes to the composition of the board were precleared pursuant to section 5 of the Voting Rights Act. The district judge allowed the election to proceed to avoid confusion because there was still time to enjoin the election's results. For part of election day at one polling place, a sign erroneously informed voters that the school board primary had been enjoined, so the judge voided the election. The new composition was precleared in time for a substitute primary election in advance of the general election.

Topics: Section 5 preclearance; enjoining elections; enjoining certification; primary election; three-judge court.

Preclearance of a Gubernatorial Recall Election

Salazar v. Monterey County (5:03-cv-3584) and *Oliver v. California* (5:03-cv-3658) (Jeremy Fogel, N.D. Cal.); *Hernandez v. Merced County* (1:03-cv-6147) and *Gallegos v. California* (1:03-cv-6157) (Oliver W. Wanger, E.D. Cal.)

When the state set a special election on whether to recall the governor, a ballot initiative was moved from a primary election to the earlier special election. Separate federal cases alleged that the recall and the early ballot initiative could not be held because they had not been precleared pursuant to section 5 of the Voting Rights Act as required for four of California's counties. The state obtained preclearance just as a three-judge court met to review the case. The judge presiding over two similar cases in another of the state's districts allowed the court presiding over the cases filed earlier to decide the issues.

Topics: Section 5 preclearance; three-judge court; enjoining elections; news media; ballot measure.

Objections to Primary Procedures

Jones v. Alabama (Richard W. Vollmer, Jr., S.D. Ala. 1:00-cv-442)

On May 11, 2000, a county commission candidate filed a federal pro se complaint challenging election procedures for a June 6 primary election. On June 1, the candidate moved for a temporary restraining order against the holding of the election. Service of the motion was not confirmed until late at night on Friday, June 2, the response was not docketed until Monday, and the judge was out sick on Monday and Tuesday, so the motion could not be considered until the election was over. In 2001, the judge granted the defendants' motion to dismiss the case. The court of appeals affirmed.

Topics: Enjoining elections; primary election; pro se party.

ABSENTEE AND EARLY VOTING

Last-Minute Absentee Voting by Last-Minute Prisoners (PDF)

Fair Elections Ohio v. Husted (Susan J. Dlott and S. Arthur Spiegel, S.D. Ohio 1:12-cv-797)

Prisoner-rights organizations filed a federal complaint seeking provisions ensuring the ability to vote by voters detained during the days immediately preceding the 2012 general election. The district judge denied the plaintiffs immediate relief because they had not presented compelling evidence of disenfranchisement. The state's accommodations for persons with medical emergencies on election day did not create an equal protection violation because of the different burdens placed on election officials. After the case was transferred to another judge in 2014, and after additional discovery, the second judge granted the plaintiffs summary judgment on a showing that the burden on disenfranchised voters outweighed the burden on accommodating late-jailed voters. The court of appeals determined, over a dissent, however, that the plaintiff organizations did not have standing.

Topics: Prisoner voters; equal protection; absentee ballots.

Extension for Overseas Voters in Wisconsin

Romney for President, Inc. v. Wisconsin (William M. Conley, W.D. Wis. 3:12-cv-745)

A presidential campaign sought an extension for absentee ballots because they were not mailed on time as required by the Uniformed and Overseas Citizens Absentee Voting Act of 1986 (UOCAVA). The matter settled.

Topics: Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA); absentee ballots.

Early Voting on Indian Reservations

Wandering Medicine v. McCulloch (Richard F. Cebull and Donald W. Molloy, D. Mont. 1:12-cv-135)

Members of three Indian tribes sought the establishment of satellite county clerk and recorder offices for voter registration and in-person absentee voting. The first judge assigned to the case denied relief for lack of discriminatory intent and because reservation residents have successfully elected candidates of their choice. After the first judge retired, a second judge determined that the plaintiffs had alleged plausible equal protection and voting rights claims.

Topics: Poll locations; equal protection; section 2 discrimination; early voting; absentee ballots.

Mailing Overseas Absentee Ballots on Time in Georgia in 2012

United States v. Georgia (Steve C. Jones, N.D. Ga. 1:12-cv-2230)

The Justice Department filed a federal complaint against Georgia on June 27, 2012, because a planned primary runoff election would not allow enough time after the initial primary election to mail absentee ballots overseas. The district judge extended the deadline for return of absentee runoff ballots and ordered Georgia to pay for their express delivery. The court retained jurisdiction over absentee voting in Georgia in 2013 and 2014. In 2014, Georgia amended its election laws to comply with the Uniformed and Overseas Absentee Voting Act, so the lawsuit was dismissed.

Topics: Absentee ballots; Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA); recusal.

Timely Overseas Ballots in Alabama

United States v. Alabama (Myron H. Thompson, M.D. Ala. 2:12-cv-179)

The U.S. Department of Justice alleged violations by Alabama of the Uniformed and Overseas Citizens Absentee Voting Act of 1986 (UOCAVA), as amended by the Military and Overseas Voter Empowerment Act of 2009 (MOVE Act), respecting timely distribution of absentee ballots for a March 2012 primary election. A weekend and two court days later, the district judge ordered the parties to submit a remedy plan within four days. A few days before the election, the judge extended the deadline for casting overseas ballots and ordered publication of the revised overseas absentee voting procedures. In 2014, the judge ordered permanent changes to the election timetable, and he retained jurisdiction over ballot timing in the interim.

Topics: Absentee ballots; Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA); primary election.

Mailing Nevada's Overseas Ballots on Time

Doe v. Miller (Gloria M. Navarro, D. Nev. 2:10-cv-1753)

On October 8, 2010, the Republican candidate for secretary of state filed a pro se federal complaint seeking relief from a county's failure to mail absentee ballots to some overseas voters on time. The district judge dismissed the complaint as moot because of efforts election officials had already undertaken to remedy the error.

Topics: Absentee ballots; Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA); pro se party.

Prompt Delivery of Absentee Ballots by Guam

United States v. Guam (Frances M. Tydingco-Gatewood, D. Guam 1:10-cv-25)

On October 6, 2010, the Justice Department filed a federal action to enforce Guam's compliance with the Overseas Citizens Absentee Voting Act (UOCAVA). Guam filed a notice that it would not oppose the action, and after an October 13 hearing the district court ordered compliance. For elections in 2012, the district court issued a stipulated order of compliance, because Guam had not yet achieved compliance legislatively.

Topics: Absentee ballots; Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA).

County Differences in Providing Absentee Ballots

Vanzant v. Brunner (Susan J. Dlott, S.D. Ohio 1:10-cv-596)

A federal complaint filed two months before the 2010 general election alleged an equal protection violation because some counties were more generous than others in facilitating absentee voting. The district court denied relief.

Topics: Absentee ballots; equal protection.

Right to Vote Absentee

Cunningham v. Leigh (W. Allen Pepper, Jr., N.D. Miss. 1:10-cv-49)

A federal complaint, which was filed four days in advance of a meeting of voters to select trustees for a school district, sought an injunction requiring absentee ballots for the meeting. After a telephonic hearing two days after the complaint was filed, the district judge determined that voters do not have a fundamental right to absentee ballots, the plaintiffs had shown no discriminatory intent, and the plaintiffs' evidence of discriminatory impact was weak, so the judge denied immediate relief.

Topic: Absentee ballots.

Post-Election Verification of a Disabled Voter's Absentee Ballot

Ray v. Franklin County Board of Elections (George C. Smith, S.D. Ohio 2:08-cv-1086)

A voter bedridden and homebound because of diabetes and panic attacks filed a federal action against the county board of elections, claiming that the board had improperly required her to visit the board by the previous day to protect the validity of her absentee ballot. The district court enjoined the board to make reasonable accommodations to the plaintiff's disabilities and awarded the plaintiff \$16,139.50 in attorney fees and costs.

Topics: Absentee ballots; attorney fees; case assignment.

Military Absentee Ballots 2008

McCain-Palin 2008, Inc. v. Cunningham (Richard L. Williams, E.D. Va. 3:08-cv-709)

On the day before the 2008 presidential election, one party's campaign filed a federal lawsuit alleging that Virginia had not sent absentee ballots to military personnel overseas in time for the voters to return the ballots in time to be counted. The district court ordered an extension of time for accepting absentee ballots from overseas so long as they were cast before the polls closed.

Topics: Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA); military ballots; absentee ballots; intervention.

Accusations of Voter Fraud

Escobedo v. Rogers (William P. Johnson, D.N.M. 1:08-cv-1002)

A federal complaint alleged aggressive and harassing investigations into the plaintiffs' rights to vote. The district judge denied the plaintiffs immediate relief because the evidence showed that both had voted in the 2008 general election. After the election, the judge dismissed the complaint because there was no imminent threat of further injury to the plaintiffs by the defendants.

Topics: Absentee ballots; recusal; case assignment; registration challenges; citizenship; primary election.

Early Voting Locations

Curley v. Lake County Board of Elections and Registration (Joseph S. Van Bokkelen, N.D. Ind. 2:08-cv-287)

The central question in this case was whether a majority vote or a unanimous vote by members of an election board was required to open satellite locations for early voting. A state court judge issued an injunction favoring the unanimity requirement shortly after the case was removed to federal court. After the parties agreed to maintain the status quo until the federal judge could rule, some of their attorneys filed a similar action in another state court and got a conflicting state court injunction. Employing the All Writs Act, the federal judge vacated the second injunction, but he later determined that his case was not removable.

Topics: Early voting; poll locations; matters for state courts; removal; enforcing orders; intervention.

Same-Day Registration and Absentee Voting

Project Vote v. Madison County Board of Elections (James S. Gwin, N.D. Ohio 1:08-cv-2266) and Ohio Republican Party v. Brunner (George C. Smith, S.D. Ohio 2:08-cv-913)

Absentee voting began in Ohio 35 days before the 2008 general election; state election law required voters to be registered at least 30 days before the election. Could new voters both register and vote on the same day if they did so after absentee voting began and before the deadline for new voter registrations? On a Wednesday, three public interest organizations and two voters filed a federal complaint in the Northern District against a county in the Southern District that interpreted the law as requiring registration 30 days before voting instead of 30 days before the election. The district judge set the matter for hearing on Monday mid-day. On Friday, the Republican Party and a voter filed a federal action in the Southern District to force Ohio's secretary of state to require voters to be registered for 30 days before voting. Over the weekend, defendants in each case moved to transfer their case to the other district. Both judges denied these motions, and both judges moved up their Monday hearings. On Monday, the Northern District judge ruled that the statute required registration 30 days before the election, not 30 days before voting. That same day, Ohio's supreme court reached the same result. Later that day, the Southern District judge deferred to the state court on the issue. Other issues in the Southern District case received expedited review by another district judge, the court of appeals, and the Supreme Court.

Topics: Absentee ballots; case assignment; Help America Vote Act (HAVA); registration procedures.

Accommodating Overseas Voters in a Special Election

DuPage County Board of Election Commissioners v. Illinois State Board of Elections (Ruben Castillo, N.D. Ill. 1:08-cv-232)

Election officials filed a federal complaint seeking relief from the time constraints imposed by a special election to fill a seat in the U.S. House of Representatives timed to coincide with a presidential primary election, because the schedule did not give them enough time to provide overseas voters with their ballots on time. The district judge granted the officials departures from statutory deadlines to accommodate the special election dates. The judge modified time deadlines for overseas voters and authorized the use of blank absentee ballots.

Topics: Absentee ballots; Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA); intervention.

Pro Se Suit to Nullify All Absentee Ballots

Freeman v. McKnight (Gary L. Sharpe, N.D.N.Y. 1:07-cv-1123)

A candidate who earned more voting-booth votes than his opponent, but who trailed after absentee ballots were counted, filed a pro se action to nullify absentee ballots because their mailing envelopes had been discarded so timely mailing could not be verified. The judge determined that the plaintiff had not provided the defendants with proper notice or shown entitlement to immediate injunctive relief.

Topics: Absentee ballots; pro se party; enjoining certification.

Equal Provision of Early Voting in Cook County

Gustafson v. Illinois State Board of Elections (David H. Coar, N.D. Ill. 1:06-cv-1159)

A federal complaint charged a city and its county with unequal provision of early voting. The district judge found that the inconsistencies among the jurisdictions were not so serious as to merit federal court intervention.

Topics: Early voting; poll locations; primary election.

Rejecting Absentee Ballots Without Notice and an Opportunity to Be Heard

Zessar v. Helander (David H. Coar, N.D. Ill. 1:05-cv-1917)

A 2005 federal class action filed four days in advance of a scheduled election charged that the state's absentee voting system did not comply with due process requirements; an absentee vote cast in 2004 was not counted because of an erroneous conclusion that the ballot signature did not match the registration signature. The district judge initially heard a motion for emergency relief on election day, but set the matter for hearing two days later when defendants could participate after the plaintiff's attorney acknowledged difficulties arising from his filing the case so close to an election. Because the plaintiff voted in person on election day, the district judge denied him immediate relief at the second hearing. After certifying both plaintiff and defendant classes, the district judge determined that state procedures violated due process.

Topics: Absentee ballots; laches; class action.

Late Absentee Ballots in Florida

Friedman v. Snipes (Patricia A. Seitz and Alan S. Gold, S.D. Fla. 1:04-cv-22787)

On the day of the 2004 general election, three voters filed a federal complaint claiming that although they requested absentee ballots on time they did not receive them in time to cast them without a risk that the ballots would not be counted. The district judge assigned to the case set a status hearing for the following morning, but on the day of the hearing she recused herself at the request of the state's secretary of state because of her husband's legal work for one of the major political parties. The judge to whom the case was reassigned reset the hearing for later that day. The second judge granted a temporary restraining order segregating the ballots in question, but he ultimately denied the plaintiffs a preliminary injunction after an evidentiary hearing.

Topics: Absentee ballots; ballot segregation; recusal; case assignment.

Casting a Provisional Ballot Because the Absentee Ballot Never Arrived

White v. Blackwell (David A. Katz, N.D. Ohio 3:04-cv-7689)

On the morning of a general election, a voter who never received the absentee ballot she applied for filed an action to compel the state to accept her provisional ballot cast on election day. The court determined that the Help America Vote Act compelled relief for the plaintiff, and the judge ordered that all counties in the state accept provisional ballots from voters who did not receive absentee ballots that they applied for. A year later, for a special election, the judge was called upon to provide the same relief. The judge determined that the plaintiff was entitled to attorney fees, and the parties settled on an amount of \$225,000.

Topics: Absentee ballots; provisional ballots; Help America Vote Act (HAVA); 42 U.S.C. § 1983; enforcing orders; attorney fees.

Public List of Absentee Voters

Meehan v. Philadelphia County Board of Commissioners (William H. Yohn, Jr., E.D. Pa. 2:04-cv-5123)

Relying on a 1994 opinion by the U.S. Court of Appeals for the Third Circuit, Republican committees filed a federal action on election day 2004, complaining that the committees had wrongfully been denied a list of persons who had received absentee ballots so that the committees could initiate challenges to absentee votes. After proceedings late on election day and on the following morning, the district judge signed consent decrees delaying by a few days the counting of absentee ballots. At the end of the week, the plaintiffs voluntarily dismissed their action.

Topics: Absentee ballots; recusal; case assignment.

Early Voting Locations in Duval County

Jacksonville Coalition for Voter Protection v. Hood (Harvey E. Schlesinger, M.D. Fla. 3:04-cv-1123)

On a Tuesday, the day after early voting started, three voters' rights organizations and two voters filed a federal complaint seeking to compel the county to provide more early voting locations. While the suit was pending, the county agreed to provide a few more sites, but not as many as the plaintiffs sought. The court heard the matter on Friday and issued its opinion on the following Monday. The court denied the plaintiffs immediate relief because they had not shown that the number and locations of early voting sites discriminated against African-American voters.

Topics: Poll locations; early voting.

Early Voting Locations in Volusia County

NAACP v. Lowe (G. Kendall Sharp, M.D. Fla. 6:04-cv-1469)

On October 7, 2004, African-American voters filed a federal action complaining that the county's only early voting location was not convenient for African-American voters on the county's east side. On the following day, the plaintiffs filed a motion for a preliminary injunction and expedited discovery, and the district judge set a hearing on the motion for 11 days later. Before the hearing occurred, however, the county agreed to open additional early voting locations, so the parties stipulated to a dismissal of the action. The judge ruled that no more than one location was legally required, but the opening of additional sites mooted the case.

Topics: Poll locations; early voting.

Mailing Overseas Absentee Ballots on Time in Georgia in 2004

United States v. Georgia (Charles A. Pannell, Jr., N.D. Ga. 1:04-cv-2040)

The Justice Department filed a federal complaint against Georgia for mailing primary ballots to overseas voters late. The district judge ordered the following: (1) Georgia will accept faxed ballots, (2) Georgia will accept Internet-based write-in absentee ballots, (3) Georgia will pay for express delivery of absentee ballots, and (4) absentee ballots will be accepted until three days after the election if mailed by election day.

Topics: Absentee ballots; Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA); case assignment.

Military Absentee Ballots 2004

United States v. Pennsylvania (1:04-cv-830) and Reitz v. Rendell (1:04-cv-2360) (Yvette Kane, M.D. Pa.)

The federal government sued to require Pennsylvania to send out absentee ballots to military personnel overseas in time for them to come back and be counted for a primary election. The judge ordered an extension of the ballots' due date. The judge also ordered an extension for military absentee ballots in the general election on a complaint by parents of two soldiers.

Topics: Absentee ballots; military ballots.

Absentee Ballots Delivered by Third Parties

Pierce v. Allegheny County Board of Elections (Joy Flowers Conti, W.D. Pa. 2:03-cv-1677)

On the Friday before the November 2003 election, two candidates filed a federal action to enjoin the counting of absentee ballots that were delivered to the board of elections by persons other than the voters. The district judge cleared her calendar and held a hearing that afternoon, after which she ordered the ballots in question segregated. The judge conducted a day-long hearing on Monday; on Tuesday, she ruled that the ballots should remain segregated and deemed challenged under state law. State officials and state courts eventually determined that some of the ballots in question were valid and some were not.

Topics: Absentee ballots; ballot segregation; matters for state courts.

Political Party's Mailing Absentee Ballot Applications

Republican Party of New Mexico v. New Mexico (Dee Benson, D.N.M. 1:00-cv-1307)

A federal complaint challenged a new state rule prohibiting political parties from mailing out absentee ballot applications. The case was assigned to a visiting judge after all judges on the local bench recused themselves. The presiding judge denied the plaintiffs immediate injunctive relief, and the case subsequently settled.

Topics: Absentee ballots; party procedures; recusal; case assignment.

VOTER IDENTIFICATION

Library Cards as Photo Identification

Turner-Golden v. Hargett (Aleta A. Trauger and Kevin H. Sharp, M.D. Tenn. 3:12-cv-765)

A city and a voter filed a federal complaint seeking acceptance of library cards as photo identifications for voting. The emergency motions judge denied immediate relief. The assigned judge later determined that the library cards did not meet the requirements of a state statute for voter photo identification.

Topics: Voter identification; matters for state court; case assignment.

Ohio's Voter-Identification Law

Northeast Ohio Coalition for the Homeless v. Brunner (Gregory L. Frost and Algenon L. Marbley, S.D. Ohio 2:06-cv-896)

Public interest organizations challenged Ohio's 2006 voter-identification laws. At the hearing on a temporary restraining order, the parties informed the judge that the case was related to a case already pending before a different judge, to whom the second case was then reassigned. The second judge found the identification laws probably unconstitutional, but the court of appeals stayed his temporary restraining order. The court of appeals also reversed the judge's denial of the state's intervention as a party in addition to the state's secretary of state. The case is now governed by a consent decree.

Topics: Voter identification; case assignment; intervention; attorney fees.

Extra Proof of Citizenship for Naturalized Citizens

Boustani v. Blackwell (Christopher A. Boyko, N.D. Ohio 1:06-cv-2065)

The August 2006 suit challenged a new law that required naturalized citizens whose citizenship is challenged at the polls to present their naturalization certificates before they can vote. On the day before an injunction hearing, the secretary of state conceded that the law was constitutionally questionable, but he said that there was not enough time for the legislature to cure the law before the upcoming election. The judge issued an injunction forbidding naturalized citizens from being required to provide additional documentation or information before voting. The plaintiffs recovered \$80,000 in attorney fees.

Topics: Citizenship; registration challenges; voter identification; attorney fees.

Voter Photo Identification

Common Cause/Georgia v. Billups (Harold L. Murphy, N.D. Ga. 4:05-cv-201)

On September 19, 2005, Georgia voters filed a federal complaint challenging the constitutionality of Georgia's voter photo identification law. The district judge signed a proposed order to show cause why a preliminary injunction should not be granted and scheduled a hearing for October 12. On October 18, the court granted a preliminary injunction. Georgia enacted a revised photo identification law in 2006; in 2007, the court determined that the revised law was constitutional. The court of appeals affirmed in 2009.

Topics: Voter identification; intervention; news media; section 5 preclearance.

American Indian Voter Identification

ACLU of Minnesota v. Kiffmeyer (James M. Rosenbaum, D. Minn. 0:04-cv-4653)

The court determined that recognizing tribal photo identification cards as proof of both identity and address only if the voter resided on a reservation violated equal protection. While the case was pending, the legislature brought the state's law into compliance.

Topics: Voter identification; Help America Vote Act (HAVA); equal protection.

Voter Identification in Lawrence, Massachusetts

Morris v. City of Lawrence (Rya W. Zobel, D. Mass. 1:01-cv-11889)

On the day before a municipal election, a voter and two voting rights organizations filed a federal complaint challenging a city's planned voter-identification requirement. Defense counsel acknowledged that voters would show up without identification, because they would not be aware of the new requirement, and they would only be able to vote if they signed their ballots. The court enjoined the requirement.

Topics: Voter identification; case assignment.

POLL HOURS

Keeping Polls Open Longer Because of Weather

Obama for America v. Cuyahoga County Board of Elections (Solomon Oliver, Jr., N.D. Ohio 1:08-cv-562)

On the evening of a presidential primary, bad weather was interfering with both ballots and voters getting to the polls. One of the candidates filed a late motion to keep the polls open. Because of technical difficulties, the clerk's office was unable to reach the assigned judge, so the day's duty judge held a telephonic proceeding on the temporary restraining order motion. He decided not to provide relief with respect to polling places in the state's other district, but he did order some polls in his district to remain open late. He ordered ballots cast by voters arriving after the regular closing time to be segregated. The news media reported that polls had already closed by the time they got the judge's order and did not reopen.

Topics: Polling hours; case assignment; ballot segregation.

Keeping Polls Open Late Because They Opened Late

Ohio Democratic Party v. Cuyahoga County Board of Elections (Dan Aaron Polster, N.D. Ohio 1:06-cv-2692)

Because a county was using new voting equipment, several polls opened late, so one of the parties filed a federal action to delay poll closings as well. The judge assigned the case could not be reached so the motion for a temporary restraining order was heard by the day's duty judge. The judge determined that the problems were localized, so he ordered a late closing for 16 precincts.

Topics: Polling hours; voting technology; case assignment; intervention; news media.

Long Lines at the Polls

Ohio Democratic Party v. Blackwell (Algenon L. Marbley, S.D. Ohio 2:04-cv-1055)

At 5:54 p.m. on election day 2004, Ohio's Democratic Party filed a federal action to keep polls open longer in two counties, alleging that an insufficient number of voting machines was resulting in long lines, which was discouraging voters. The court ordered the polling places to offer voters alternative methods of voting.

Topics: Polling hours; voting technology; provisional ballots; absentee ballots.

Keeping Polls Open Late Because of Excessive Registration Purging

Maine Democratic Party v. City of Portland (Kermit V. Lipez, D. Me. 2:00-cv-360)

A large number of voters went to the polls in Portland, Maine, for the 2000 general election to discover that their voter registrations had been canceled. Poll workers referred them to city hall, where lines grew very long. On the afternoon of the election, the Democratic Party sought a temporary restraining order to keep the polls open an extra two hours. All district judges were out of town, so a local circuit judge heard the motion. The judge declined to keep the polls open late but ordered the polls to let voters correct registration errors at the polls and ordered that all voters in line by the time the polls closed be able to vote.

Topics: Registration challenges; National Voter Registration Act; polling hours.

POLLING PLACE PROCEDURES

Invalid Primary Election

Young v. West Point Municipal Election Commission (Michael P. Mills, N.D. Miss. 1:13-cv-99)

Five voters, including an unsuccessful incumbent in a primary election, filed a federal complaint alleging that a municipal election commission conducted a sham primary election, because the municipal party executive committee was without members and therefore could not properly convey to the election commission the authority to conduct the election. The district judge determined that the plaintiffs had not made a showing sufficient to enjoin the next day's runoff election.

Topics: Enjoining elections; primary election; party procedures; case assignment.

No-Bid Contract for Election Software

Fitrakis v. Husted (Gregory L. Frost, S.D. Ohio 2:12-cv-1015)

On the day before a general election, a voter filed a complaint charging the secretary of state with contracting for voting software and equipment without public bidding. The judge held a teleconference on the day the case was filed and heard evidence on election morning. The state offered evidence that the purpose of the software was not the tabulation of votes but the reporting of tabulations by the counties to the secretary's office. The judge found the plaintiff's concerns too speculative for immediate relief.

Topic: Voting technology.

Preventing Long Lines

Florida Democratic Party v. Detzner (Joan A. Lenard and Ursula Ungaro, S.D. Fla. 1:12-cv-24000)

Late on the Saturday before the 2012 general election, because of long lines during early voting, a party filed a complaint seeking relief from anticipated long lines on election day at the polls in three counties. The assigned judge was out of the district when the case was filed, so another judge, selected at random, handled the emergency motion. In response to the lawsuit, the counties created additional opportunities for in-person absentee voting.

Topics: Absentee ballots; early voting; case assignment.

A Citizenship Check Box on Ballot Applications

Bryanton v. Johnson (Paul D. Borman, E.D. Mich. 2:12-cv-14114)

On September 17, 2012, a county clerk and three voters filed a federal complaint against the state's secretary of state challenging her planned inclusion of a citizenship verification question on ballot applications in the upcoming general election. The district court heard a motion for a preliminary injunction on October 5. After a six-hour hearing, the court granted the injunction. The ballot application question violated equal protection because it was not applied uniformly and because evidence at the hearing showed that voters who failed to check the box would still be permitted to vote.

Topics: Citizenship; equal protection; case assignment.

Order of Names on the Ballot

Crim v. Tennessee Democratic Party (Kevin H. Sharp, M.D. Tenn. 3:12-cv-838)

A losing primary candidate filed a federal complaint alleging that the victor was improperly included on the ballot and improperly positioned on the ballot because his name was listed alphabetically first. On the next day, after a hearing, the district judge denied the plaintiff immediate relief, finding no wrongdoing and also observing that the plaintiff could have challenged the ballot before the election.

Topics: Enjoining certification; getting on the ballot; laches; equal protection; intervention.

Write-In Candidates Closing a Primary Election

Mazzilli v. Townsley (William J. Zloch, S.D. Fla. 1:12-cv-22432)

A Florida statute provides that a primary election is open to all voters if only one party fields a candidate for the general election. A ruling by Florida's secretary of state specifies that if anyone registers as a write-in candidate for the general election, then the primary remains closed to voters who are not party members. Several weeks in advance of a primary election in which only one party had candidates, two voters challenged the secretary's ruling. Less than one month later, the court denied immediate injunctive relief because the plaintiffs had failed to include the secretary of state as a defendant. Twelve days later, reviewing an amended complaint, the court held the secretary's ruling a reasonable interpretation of an unambiguous statute serving legitimate interests.

Topics: Primary election; write-in candidate.

"None of These Candidates"

Townley v. Nevada (Robert C. Jones, D. Nev. 3:12-cv-310)

A June 8 federal complaint sought to prohibit a state from including "none of these candidates" on the ballot, because state law prevented that choice from prevailing. On August 22, the judge granted the plaintiffs relief, but the court of appeals stayed the injunction. Later, the court of appeals determined that the plaintiffs did not have standing because the relief sought—elimination of the none-of-these choice—would not redress the alleged impropriety—not counting none-of-these votes when determining the winner.

Topics: Intervention; recusal; case assignment.

School Bond Opposition Dilution

Duke v. Lawson (Charles Everingham IV, E.D. Tex. 2:11-cv-246)

Voters opposing a school bond filed a federal complaint to enjoin the opening of school facilities for early voting. A district court magistrate judge denied the plaintiffs immediate relief, so the plaintiffs voluntarily dismissed the case.

Topics: Poll locations; early voting.

Write-In Lists

Rudolph v. Fenumiai (Ralph R. Beistline, D. Alaska 3:10-cv-243)

Voters challenged Alaska's providing polling places with lists of write-in candidates so that voters could refresh their recollection about who was running and how to spell their names. While a motion for a temporary restraining order was pending, the Justice Department precleared the procedure, so the motion was denied as moot.

Topics: Section 5 preclearance; write-in candidate.

Enjoining Temperamental Voting Machines

Fetzer v. Barlett (Malcolm J. Howard and David W. Daniel, E.D.N.C. 4:10-cv-158)

A federal complaint filed on Friday, October 29, 2010, challenged the planned use of touchscreen voting machines that the complaint alleged would default to votes for the other party. The district judge assigned to the case was at an airport returning from a week out of town, and he referred the case to a magistrate judge for a status conference the day the complaint was filed. On Saturday, the district judge heard the case and issued a temporary restraining order requiring warning notices at polling places instructing voters to review carefully the machines' registration of the voters' choices.

Topics: Voting technology; election errors; case assignment.

Election Observers

Tucker v. Hosemann (W. Allen Pepper, Jr., N.D. Miss. 2:10-cv-178)

A federal complaint filed 13 days in advance of the 2010 general election alleged that election practices discriminated against black voters. According to the presiding judge, "Though it was unclear from their pleadings the exact nature of the relief sought by the plaintiffs, the court was able to pinpoint the issue during the TRO hearing [held six days after the complaint was filed]." The judge concluded that the practice by offices of Mississippi's secretary of state and attorney general of sending observers to federal and state elections held in Mississippi was not a new practice requiring preclearance pursuant to section 5 of the Voting Rights Act.

Topic: Section 5 preclearance.

Fusion Voting

Conservative Party of New York State v. New York State Board of Elections (Jed S. Rakoff, S.D.N.Y. 1:10-cv-6923)

Minor parties in a state that allows candidates to appear as nominees of multiple parties filed an action against a rule established for new voting technology that would give voting preferences in some cases to the major parties. The judge denied immediate relief because the action was brought too close to the election, but the case ultimately resulted in a consent judgment and an award of \$199,000 in attorney fees.

Topics: Voting technology; laches; attorney fees.

Adequate Polling Place Resources

Virginia State Conference of NAACP Branches v. Kaine (Richard L. Williams and Dennis W. Dohnal, E.D. Va. 3:08-cv-692)

Eight days before the 2008 general election, voters filed a federal complaint charging Virginia with unequal allocation of polling place resources. A magistrate judge held a settlement conference on the case's third day, after which the plaintiffs decided to withdraw their motion for a preliminary injunction. Two days later, the plaintiffs again sought a preliminary injunction, which the district judge denied on the day before the election. Instead, the judge ordered the posting of notices about curbside voting and that anyone in line at closing time would be able to vote.

Topics: Equal protection; polling hours; intervention; case assignment.

Preparing for Voting Machine Failure

NAACP State Conference of Pennsylvania v. Cortés (Harvey Bartle III, E.D. Pa. 2:08-cv-5048)

A federal complaint filed 12 days before a general election challenged a directive allowing the use of paper ballots only when all voting machines fail. A day after a hearing, held five days after the complaint was filed, the district judge issued a preliminary injunction requiring the offering of paper ballots when half or more of the voting machines cease to work.

Topics: Voting technology; case assignment; intervention.

Barack Obama's Citizenship

Berg v. Obama (R. Barclay Surrick, E.D. Pa. 2:08-cv-4083)

A few days before the 2008 Democratic National Convention, an attorney filed a pro se complaint seeking to have Barack Obama declared ineligible to be President, alleging that he is not a natural born citizen. The judge denied immediate relief at an ex parte proceeding where the plaintiff could not confirm service of the complaint on the defendants. Over the next eight weeks, the court received three pro se motions to intervene: one to support the plaintiff, one to challenge John McCain's citizenship, and one to know the facts of the case. The judge dismissed the action for lack of standing, and the court of appeals affirmed.

Topics: Pro se party; getting on the ballot; intervention.

Bilingual Ballots in Puerto Rico

Diffenderfer v. Gómez-Colón (José Antonio Fusté, D.P.R. 3:08-cv-1918)

Three weeks before ballots needed to be printed for a 2008 election, a federal complaint objected to Puerto Rico's ballots and their instructions being provided only in Spanish. The court certified the case as a class action and ordered that ballots be printed in both Spanish and English. While an appeal was pending, Puerto Rico enacted legislation requiring bilingual ballots in future elections.

Topics: Ballot language; class action; attorney fees; case assignment.

Preclearance of Nominating Procedures

LULAC of Texas v. Texas (Fred Biery, W.D. Tex. 5:08-cv-389)

Five days after the 2008 presidential primary elections in Texas, and at the beginning of further delegate selection through caucuses, Latino voters and organizations filed a federal complaint attacking how the Democratic Party picked delegates for national and local nominating conventions. The district court dismissed the action and determined that a claim that the nominating procedures had not received section 5 preclearance did not require resolution by a three-judge court, but the court of appeals disagreed. In time, the case was mooted by the Justice Department's granting of preclearance. The court of appeals vacated an award of attorney fees.

Topics: Section 5 preclearance; three-judge court; laches; party procedures; attorney fees.

Voting Without Notice of Errors

ACLU v. Brunner (Kathleen M. O'Malley, N.D. Ohio 1:08-cv-145)

The January 2008 complaint challenged the selection by a county of new voting machines because the machines would not give voters notice of errors and opportunities to cure them. The district judge determined that by the time the complaint had been filed there was not time for a remedy that would not excessively disrupt the March presidential primary.

Topics: Voting technology; laches.

At-Large Caucus Precincts

Chesnut v. Democratic Party of Nevada (James C. Mahan, D. Nev. 2:08-cv-46)

In 2008, voters challenged Nevada's Democratic Party's plans for nominating caucuses in which some voters would be able to participate in at-large caucuses at times other than the scheduled time for regional caucuses. The court determined that the party had not exceeded its authority in determining its nominating procedures.

Topics: Party procedures; intervention; recusal.

Application of Election Law to a Straw Poll

Schulz v. Iowa (James E. Gritzner, S.D. Iowa 4:07-cv-350)

An eight-plaintiff pro se federal complaint challenged the participation fee for Iowa State University's Republican straw poll for the 2008 presidential election, which was to be held two days after the complaint was filed. On the afternoon before the poll, the district judge denied the plaintiffs immediate relief from the bench after a hearing. The court of appeals affirmed, on the day of the poll.

Topics: Pro se party; equal protection; interlocutory appeal.

Spanish-Language Ballots in Philadelphia

United States v. City of Philadelphia (Petrese B. Tucker, E.D. Pa. 2:06-cv-4592)

Twenty-five days in advance of the November 2006 general election, the Justice Department filed a civil complaint against Philadelphia for failure to provide Spanish-language election resources in violation of sections 203 and 208 of the Voting Rights Act. Twelve days later, the Justice Department moved for a temporary restraining order or a preliminary injunction enforcing the Voting Rights Act and appointing federal election observers. The court declined to order federal observers because of the government's weak case dilatorily brought.

Topics: Ballot language; laches; three-judge court.

Spanish-Language Ballots in Springfield, Massachusetts

United States v. City of Springfield (Michael A. Ponsor, D. Mass. 3:06-cv-30123)

The Justice Department filed a civil complaint against Springfield, Massachusetts, on August 2, 2006, alleging violations of sections 203 and 208 of the Voting Rights Act for failure to provide Spanish-language election resources for Spanish-language voters. By four days in advance of a September 19 primary election, the court and the parties came to agreement on a consent decree, which operated successfully until its expiration early in 2010.

Topics: Ballot language; three-judge court; primary election.

Replacing Mechanical Voting Machines with Electronic Voting Machines

Taylor v. Onorato (Gary L. Lancaster, W.D. Pa. 2:06-cv-481)

Approximately five weeks before a primary election, voters and a public interest group filed a federal suit to enjoin replacement of mechanical voting machines with electronic voting machines, relying on the Help America Vote Act (HAVA). On the case's second day, the plaintiffs moved for a preliminary injunction. At the end of the case's first week, the district judge held an informal in-chambers status conference, from which news media were excluded. After a three-day evidentiary hearing beginning a week later, the district judge determined that HAVA did not afford the plaintiffs a private right of action.

Topics: Voting technology; Help America Vote Act (HAVA); news media.

Voting Equipment for the Blind in Volusia County

National Federation of the Blind v. Volusia County (John Antoon II, M.D. Fla. 6:05-cv-997)

Three months before a municipal election, advocates for the blind and five blind voters filed a federal complaint against a county, charging that the county would not provide voting machines accessible to blind people. The district judge heard a motion for a preliminary injunction 10 days later. Eleven days after that, the judge denied the injunction. While an interlocutory appeal was pending, the county bought new voting equipment and the plaintiffs dismissed their case voluntarily.

Topics: Voting technology; interlocutory appeal.

Continuing the Use of Punch-Card Ballots for a Special Election (PDF)

Southwest Voter Registration Education Project v. Shelley (Stephen V. Wilson, C.D. Cal. 2:03-cv-5715)

Two months in advance of a gubernatorial recall election, a federal complaint challenged the use in some jurisdictions of punch-card ballots. The district judge denied immediate relief because the election would be held before a previous consent decree's decertification of punch-card ballots would go into effect. A three-judge panel of the court of appeals reversed the district court, but an 11-judge en banc panel subsequently affirmed the district court. The governor was recalled.

Topics: Voting technology; intervention; laches.

Voters' Right to a Completely Open Primary

Snellgrove v. Georgia (Hugh Lawson, M.D. Ga. 5:02-cv-288)

Four days before a primary election, independent voters filed a federal complaint complaining that the primary election prevented them from voting for a member of one party for one office and a member of a different party for another office. After an evidentiary hearing on the day before the election, the district judge declined to issue an injunction.

Topic: Primary elections.

Permitting Independent Voters to Vote in Party Primaries

Hole v. North Carolina Board of Elections (James A. Beaty, Jr., M.D.N.C. 1:00-cv-477)

An unsuccessful primary election candidate filed a federal complaint nine days after the election alleging that her First Amendment rights were violated by the state and the party's permitting independents to vote in the election. The district court denied relief as foreclosed by The Supreme Court's 1986 decision in *Tashjian v. Republican Party of Connecticut*.

Topic: Primary election.

POLLING PLACE ACTIVITIES

Exit Polling in Nevada

ABC, Inc. v. Heller (Philip M. Pro, D. Nev. 2:06-cv-1268)

Four weeks before the 2006 general election, news media sought federal court enforcement of their constitutional right to conduct exit polls within 100 feet of polling places. The court granted the media the relief they sought.

Topics: Exit polls; news media; attorney fees.

Akron Beacon Journal Access to Polls on Election Day

Beacon Journal Publishing Co. v. Blackwell (Paul R. Matia, N.D. Ohio 5:04-cv-2178)

News media sought injunctive relief on the day before the 2004 general election from restrictions on anyone other than voters, poll workers, and police officers entering a polling place. The district court denied the media relief, but the court of appeals vacated that decision and granted the media injunctive relief a few hours before the polls closed.

Topics: Exit polls; news media.

Exit Polling in Ohio

ABC v. Blackwell (Michael H. Watson, S.D. Ohio 1:04-cv-750)

On the morning before the 2004 general election, news media challenged a directive by Ohio's secretary of state that exit polling not be conducted within 100 feet of a polling place. Late at night on the day the case was filed, the judge granted the media injunctive relief against the directive.

Topics: Exit polls; news media.

Intimidating Native American Voters

Daschle v. Thune (Lawrence L. Piersol, D.S.D. 4:04-cv-4177)

Late on the day before a general election, a U.S. Senator up for reelection filed a federal complaint against his challenger, claiming that the challenger's supporters were discouraging Native American citizens from voting through a practice of intimidation. After a nighttime evidentiary hearing, the district court granted a temporary restraining order at 1:45 on the morning of the election.

Topics: Party procedures; recusal.

Vote Challengers

Spencer v. Blackwell (Susan J. Dlott, S.D. Ohio 1:04-cv-738) and Summit County Democratic Central and Executive Committee v. Blackwell (John R. Adams, N.D. Ohio 5:04-cv-2165)

Federal complaints were filed in both of Ohio's districts late in the week before the 2004 general election challenging a Ohio statute that permitted political parties to appoint poll watchers to challenge persons who may be voting illegitimately. Both judges issued injunctions on Sunday, but the court of appeals stayed the injunctions on Monday.

Topics: Registration challenges; intervention.

Discriminatory Voter Challengers

Curington v. Richardson (Charles R. Simpson III, W.D. Ky. 3:03-cv-665)

On the Friday before a general election, a federal complaint alleged that a political party was going to selectively position voter challengers in predominantly African-American precincts. On Monday, a state judge denied immediate relief in a related state-court action, and the federal plaintiffs made a tactical decision to withdraw their request in federal court for immediate relief. A year and a half later, the parties settled the case.

Topics: Registration challenges; equal protection; matters for state courts.

PROVISIONAL BALLOTS

Releasing Names of Provisional Voters

Mah v. Board of County Commissioners (J. Thomas Marten, D. Kan. 5:12-cv-4148)

Three days after the November 2012 general election, an incumbent candidate for a state house of representatives filed a petition in state court seeking an order that a county provide the candidate with the names and addresses of all persons who cast provisional ballots in the county. The defendant board of commissioners removed the action to federal court after a state judge granted the candidate the order she requested. The state's secretary of state sought a federal restraining order against the state court order. The board, however, complied with the state court order by its deadline. The federal judge ordered the candidate not to distribute the list or contact the voters pending further ruling.

Subsequently, the judge ruled that the Help America Vote Act "protects 'access to information about an individual provisional ballot.' It does not protect information 'about the individual casting the ballot.'"

Topics: Provisional ballots; Help America Vote Act (HAVA); removal.

Provisional Ballots Cast in the Wrong Precinct Because of Poll-Worker Error

Hunter v. Hamilton County Board of Elections (Susan J. Dlott, S.D. Ohio 1:10-cv-820)

In the 2010 election for Hamilton County Juvenile Court Judge, 23 votes separated the two candidates with the validity of many provisional ballots unresolved. The trailing candidate filed a federal action to expand the number of provisional ballots deemed valid when she learned that some, but not all, cast in the wrong precinct would be counted if they were cast in the wrong precinct because of poll-worker error. The district court ordered an investigation into which ballots were cast in the wrong precinct because of erroneous instructions from poll workers. A circuit judge stayed the order, but a full panel dissolved the stay one week later. Litigation continued for 18 months, and then the plaintiff joined the juvenile court bench.

Topics: Provisional ballots; election errors; enjoining certification; interlocutory appeal; equal protection; matters for state courts.

Validity Requirements for Provisional Ballots

Ohio ex rel. Skaggs v. Brunner (Algenon L. Marbley, S.D. Ohio 2:08-cv-1077)

Ohio's secretary of state removed a mandamus action from Ohio's supreme court concerning validity requirements for provisional ballots. The case was assigned to a judge who was already presiding over related cases. The judge granted summary judgment to the state, but the court of appeals ordered the matter referred to the state court, which held the secretary of state's validity requirements to be too lax. The court of appeals affirmed the district judge's denial of attorney fees.

Topics: Matters for state courts; provisional ballots; removal; attorney fees.

Provisional Ballots for a Judicial Election in Texas

Texas Democratic Party v. Bettencourt (Gray H. Miller, S.D. Tex. 4:08-cv-3332)

Six days after the 2008 general election, the Democratic candidate for a state judgeship was a few hundred votes behind his opponent. The Democratic candidate filed a federal complaint seeking prompt resolution of several thousand provisional and absentee ballots. Two days later, the district court denied the plaintiff immediate relief. An amended complaint more generally challenging county procedures for voter registration and provisional ballots resulted in a 2012 settlement.

Topics: Provisional ballots; absentee ballots.

Preclearance of a State Supreme Court Decision That Provisional Ballots Have to Be Cast in the Correct Precinct

Kindley v. Bartlett (Terrence W. Boyle, E.D.N.C. 5:05-cv-177)

A federal class-action complaint challenged a state policy against counting provisional ballots cast in the wrong precinct, a policy recently allowed by the state's supreme court. The federal district court judge denied injunctive relief on a finding that the state was not attempting to enforce the policy in advance of preclearance pursuant to section 5 of the Voting Rights Act.

Topics: Provisional ballots; section 5 preclearance; matters for state courts; class action.

Provisional Ballot Procedures in Ohio

Schering v. Blackwell (Michael H. Watson, S.D. Ohio 1:04-cv-755)

On election day 2004, a voter filed a federal action challenging a directive by Ohio's secretary of state on the handling of provisional ballots. After an informal status conference, the plaintiff decided not to pursue immediate relief.

Topic: Provisional ballots.

Casting Provisional Ballots in the Wrong Precinct in Florida

Florida Democratic Party v. Hood (Robert L. Hinkle, N.D. Fla. 4:04-cv-395)

Florida's Democratic Party sought to enforce the Help America Vote Act (HAVA) by enjoining Florida from rejecting provisional ballots cast in the wrong precinct in the 2004 general election. The case was filed on September 29, and the court issued a preliminary injunction on October 21. The court ruled that HAVA does not require the counting of provisional ballots cast in the wrong precinct, but HAVA does require that the provisional ballots be provisionally accepted.

Topics: Help America Vote Act (HAVA); provisional ballots.

Casting Provisional Ballots in the Wrong Precinct in Michigan

Bay County Democratic Party v. Land (1:04-cv-10257) and *Michigan State Conference of NAACP Branches v. Land* (1:04-cv-10267) (David M. Lawson, E.D. Mich.)

Local branches of the Democratic Party filed a federal complaint to challenge a state directive that provisional ballots would only be counted if cast in the correct precinct. Three days later, three organizations filed a similar action in the same district, and the court consolidated the two cases. The district court denied a motion by voters to intervene as defendants, but the court permitted their participation as amici curiae. The court denied the Justice Department's motion for a short delay so that it could file an amicus brief. Three weeks after the first case was filed, the court determined that provisional ballots must be counted so long as they are cast in the correct city, village, or township. One week later, the court of appeals reversed in light of a contrary holding in another case issued on the same day.

Topics: Provisional ballots; Help America Vote Act (HAVA); 42 U.S.C. § 1983; intervention; case assignment.

Compliance with the Help America Vote Act for Provisional Ballots

Sandusky County Democratic Party v. Blackwell (3:04-cv-7582) and *League of Women Voters of Ohio v. Blackwell* (3:04-cv-7622) (James G. Carr, N.D. Ohio)

Five weeks in advance of the 2004 general election, Ohio's Democratic Party challenged directives by Ohio's secretary of state on provisional ballots as in violation of the Help America Vote Act (HAVA). The court of appeals agreed with the district court that the state was out of compliance, but the court of appeals agreed with the secretary that provisional ballots should be cast in the correct precincts.

Topics: Help America Vote Act (HAVA); provisional ballots; voter identification; 42 U.S.C. § 1983; intervention; enforcing orders; presiding remotely; attorney fees.

Casting Provisional Ballots in the Right Place

Hawkins v. Blunt (Scott O. Wright and Richard E. Dorr, W.D. Mo. 2:04-cv-4177)

The case concerns whether voters can cast provisional ballots at polling places to which they are not assigned. Claims were mooted by the state's agreeing to alter its procedures for counting provisional ballots.

Topics: Help America Vote Act (HAVA); provisional ballots; intervention; case assignment.

VOTING IRREGULARITIES

The Legitimacy of President Obama's Reelection (PDF)

Grinols v. Electoral College (Morrison C. England, Jr., E.D. Cal. 2:12-cv-2997)

Four days in advance of the electoral college's vote, a federal complaint challenged the President's reelection on the grounds that the President was a citizen of Indonesia. The district court ultimately dismissed the action as a political question. An appeal is pending.

Topics: Enjoining certification; case assignment.

Write-In Spellings

Miller v. Campbell (Ralph R. Beistline, D. Alaska 3:10-cv-252)

A candidate for Senator sued to enjoin counting write-in ballots for the incumbent unless her name was spelled correctly. The federal judge determined that this was a matter for the state courts if they could act promptly. The state courts ruled in favor of counting misspellings, and the legislature later amended the election statutes to clarify that slight misspellings were permissible.

Topics: Write-in candidate; matters for state courts; enjoining certification; ballot segregation; recusal; presiding remotely.

Preserving Voting Machine Data

Bursey v. South Carolina Election Commission (Cameron McGowan Currie, D.S.C. 3:10-cv-1545)

After an unknown candidate defeated a well-known candidate for the Democratic nomination to challenge a Republican incumbent U.S. Senator, a pro se plaintiff filed a federal complaint to enjoin election officials from clearing the primary election data from the election machines. After he learned more about the election data, the plaintiff dropped his plea for emergency relief and eventually dismissed his action voluntarily.

Topics: Election errors; pro se party; voting technology.

Remedy for a Ballot Printing Error

Bennett v. Mollis (William E. Smith, D.R.I. 1:08-cv-468)

Because of a printing error, some ballots included the name of a candidate that had withdrawn from the race. After a mathematical analysis of how many votes the error could have cost the plaintiffs' candidate, with the help of a political science professor as a technical advisor, the district judge denied the plaintiffs relief.

Topics: Election errors; special master; enjoining certification; intervention.

Winner Take All in the Electoral College

Gordon v. Cheney (Henry H. Kennedy, Jr., D.D.C. 1:05-cv-6)

Two days before the Senate was to count presidential electoral votes, a pro se plaintiff filed a federal complaint seeking to enjoin the count on the ground that electoral votes in several states were improperly allocated according to a winner-take-all rule. Two days later, the court denied immediate relief.

Topics: Enjoining certification; pro se party.

Incorrect Election Results Because of a Malfunctioning Voting Machine

Shannon v. Jacobowitz (David N. Hurd, N.D.N.Y. 5:03-cv-1413)

After votes were counted in a November 2003 election for a town supervisor, a challenger was ahead of an incumbent by 25 votes. There was evidence, however, that a voting machine registered only one vote for the incumbent because it failed to advance its tally with each additional vote. Supporters of the incumbent filed a federal complaint alleging that a comparison of the malfunctioning machine to another machine at the same location implied that the incumbent was deprived of approximately 134 votes. The district judge enjoined certification of the election and enjoined the challenger from taking office. In January 2005, the court of appeals determined that the district court's interference with the election was error. The incumbent remained in office through 2007.

Topics: Voting technology; enjoining certification.

Crossover Votes

Foster v. Salaam (Ira De Ment, M.D. Ala. 2:02-cv-1093)

A federal complaint alleged that Republicans were improperly permitted to vote in a June 2002 runoff Democratic primary election for a seat in Alabama's house of representatives. The district judge determined that the claim under section 5 of the Voting Rights Act was not valid, so a three-judge court did not need to be appointed. The plaintiffs sought voluntary dismissal and pursued the matter in state court.

Topics: Primary election; enjoining certification; enjoining elections; section 5 preclearance; three-judge court.

Customary Right of Appointment

Holley v. City of Roanoke (W. Harold Albritton, M.D. Ala. 3:01-cv-775)

A federal complaint challenged a refusal by a city council to reappoint a board of education member in violation of a customary practice in which each member of the council names the board member for the council member's district. A three-judge court was appointed to hear a claim that the alleged change in practice violated section 5 of the Voting Rights Act. After a hearing, the court dismissed the section 5 claim because it concerned appointment rather than voting. The original district judge dismissed other claims because the evidence was that the deviation from custom was motivated by policy disagreements rather than by race. A remaining claim was dismissed voluntarily.

Topics: Section 5 preclearance; three-judge court; equal protection.

RECOUNTS

Emphasis Votes

Texas Democratic Party v. Dallas County (Jorge A. Solis, N.D. Tex. 3:08-cv-2117)

During a recount for a state legislative election, one political party and two voters filed a federal action complaining that emphasis votes—in which a voter casts both a straight-party vote and a vote for the specific office—would improperly not be counted because of the switch from punch-card ballots to voting machines. After the recount was completed, the plaintiffs dropped their claims with respect to the specific election, but more general claims remained. The district court found that election procedures with respect to emphasis votes did not discriminate in violation of section 2 of the Voting Rights Act, but they were in violation of section 5 because they had not been precleared. In time, the Justice Department precleared the changes.

Topics: Voting technology; recounts; section 5 preclearance; three-judge court; section 2 discrimination; intervention.

Complete Ohio 2004 Presidential Recount

Rios v. Blackwell (James G. Carr, N.D. Ohio 3:04-cv-7724), Ohio ex rel. Yost v. National Voting Rights Inst. (Edmund A. Sargus, S.D. Ohio 2:04-cv-1139), and Delaware County Prosecuting Attorney v. National Voting Rights Inst. (James G. Carr, N.D. Ohio 3:05-cv-7286)

The Green and Libertarian candidates for President sought a complete recount of the 2004 presidential election in Ohio. After a teleconference, the district judge denied injunctive relief because neither candidate had a chance of prevailing in a recount. In Ohio's other district, a county sought an injunction against a recount there, and supporters of the recount removed the action to federal court. The district judge was reluctant to reach a decision inconsistent with the decision reached first by the judge in the other district. The second judge transferred the action to the first judge.

Topics: Recounts; presiding remotely; intervention.

Close Vote in Puerto Rico

Rosselló v. Calderón (3:04-cv-2251) and Suárez Jimenez v. Comisión Estatal de Elecciones (3:04-cv-2288) (Daniel R. Domínguez, D.P.R.)

The 2004 election of Puerto Rico's governor depended upon a recount. One of the candidates filed a federal complaint seeking enforcement of a prompt and just resolution of the recount. The district court began evidentiary hearings in mid-November. One issue to be resolved was how to count ballots in which a voter cast a vote for one party generally but for candidates of other parties for all individual offices. A state case on this issue was removed to the federal court before it was resolved, but Puerto Rico's supreme court resolved the case anyway. The district court vacated the state court's post-removal ruling and commenced additional hearings. The court of appeals determined that removal was improper. In December, the court of appeals ordered a halt to the district court's intervention in the local electoral dispute.

Topics: Matters for state courts; enjoining certification; removal; recounts; absentee ballots; intervention; attorney fees.